Federal Court Cour fédérale

Date: 20230208

Docket: T-748-22

Citation: 2023 FC 188

Ottawa, Ontario, February 8, 2023

PRESENT: The Honourable Madam Justice Furlanetto

BETWEEN:

IRIS TECHNOLOGIES INC.

Plaintiff

and

CANADA REVENUE AGENCY,
VANCE SMITH, JENNIFER RYAN,
TED GALLIVAN, and
DANIEL DONG

Defendants

ORDER AND REASONS

[1] This motion, brought by the Defendants, is for a temporary stay of the present claim [Claim] pending the determination of two proceedings that are currently pending before the Tax Court of Canada [TCC].

[2] As set out in the reasons below, I find that the matters before the TCC are intimately intertwined with the present action such that it would be in the interests of justice to grant the stay requested.

I. Background

[3] The Plaintiff, Iris Technologies Inc [Iristel] is a provider of telecommunications services to residential, commercial, and wholesale customers.

[4] The Defendants are the Canada Revenue Agency [CRA] and four individuals who are, or were at the material time, agents of the CRA.

[5] On October 30, 2019, CRA commenced an audit of Iristel, which eventually expanded in scope to an audit of Iristel's GST/HST returns for the reporting periods from January 2019 to May 2020. During the audit, CRA withheld Iristel's input tax credit refunds. Following the audit, CRA issued GST/HST assessments [Assessments] denying Iristel's refunds claimed in the amount of $121,402,942 for the period from January 2019 to May 2020, and imposing penalties of $30,350,736 for having allegedly made false statements knowingly or with gross negligence in its return.

[6] The validity of the Assessments are currently the subject of two appeals that are pending before the TCC, 2021-226(GST)G and 2021-2215(GST)G [Tax Court Appeals], which includes a request for recovery of a net tax refund of $79 million for the period from September 2019 – March 2020 that the CRA has withheld from Iristel.

[7] This Claim was issued on April 8, 2022 and requests as relief "damages for misrepresentation, misfeasance in public office, abuse of process and negligence, in the amount of $250 Million, or such other sum as this Court finds appropriate at the trial of the common issues, plus applicable taxes", as well as, "an order that the Defendants are jointly and severally liable for aggravated, exemplary and punitive damages in the amount of $25 million, or such other sum as this Court finds appropriate at the trial of the common issues".

II. Issues

[8] The parties raise the following issues on this motion:

(a) Should the Claim be stayed pending determination of the Tax Court Appeals?

(b) In the event that a stay is granted, should the Court limit the duration of the stay and provide monetary relief to Iristel during the period of the stay?

III. Analysis

A. *Should the Claim be stayed pending determination of the Tax Court Appeals?*

[9] Pursuant to paragraph 50(1)(b) of the *Federal Courts Act*, RSC, 1985, c F-7 [*Federal Courts Act*], the Court has discretion to stay a proceeding where it is in the interests of justice to do so.

[10] Whether the Court should exercise its discretion to issue a stay depends on the factual circumstances, and is guided by considerations such as securing the just, most expeditious and least expensive determination of the proceeding on its merits, including streamlining and

considering the impact of multiple proceedings, and considering whether a stay would unfairly prejudice one of the parties (*Coote v Lawyers' Professional Indemnity Company*, 2013 FCA 143 at paras 12-14; Rule 3, *Federal Courts Rules*, SOR/98-106 [*Federal Courts Rules*]).

[11] The Defendants assert that a stay should be granted in this case, as the allegations of misconduct and alleged damages are so intertwined with the merits of the Tax Court Appeals that this Court is without jurisdiction and/or it is premature to address those issues until the Tax Court Appeals have been determined. They further assert that judicial economy and Court expertise favour a stay, and that the stay requested would avoid inconsistent findings relating to the Assessments.

[12] Iristel disputes these grounds and argues that it will be unfairly prejudiced because of delay and financial loss if a stay is granted.

(1) Jurisdiction, Prematurity and Judicial Economy

[13] The only court that can determine the validity of an assessment is the TCC. Pursuant to subsection 12(1) of the *Tax Court of Canada Act*, RSC, 1985, c T-2 [TCA], the TCC has exclusive original jurisdiction to hear and determine appeals on matters arising under the *Excise Tax Act*, RSC, 1985, c E-15 [ETA]. One such matter is an assessment. As set out in subsection 299(3) of the ETA, an assessment is valid unless and until it is vacated on an objection or appeal to the TCC and subject to reassessment.

[14] Thus, a finding by this Court on the merits of the validity of the Assessments would be contrary to law as it would contradict subsection 299(3) of ETA and the exclusive jurisdiction of the TCC under the TCA.

[15] The Defendants do not dispute that the tort allegations and allegations of misconduct contained within the Claim are within the jurisdiction of the Federal Court to decide. However, the Defendants assert that it is not possible to divorce the allegations of improper conduct from the merits of the Assessments. They contend that Iristel's claims amount to an allegation that the Defendants have ignored or misapplied the ETA in their evaluation, and that their actions have instead been motivated by other improper purposes. They argue that this is effectively a challenge to the reasoning in the CRA's decision to assess or reassess, and the validity of the Assessments.

[16] The Defendants point to paragraphs 10, 34, 96, 96-1, 97, 101 and 102 of the Claim (reproduced below) as being the thrust of Iristel's claim:

> 10. The Defendants became concerned with an identified vulnerability in the taxation of telecommunications. The Defendants did not address this concern with Iristel but instead, since October 2019, the Defendants have abused the legislation, process and authority for an unlawful campaign targeting and using Iristel to stop wholesale telecommunication traffic.
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> [...]
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> 34. On April 8, 2020, on cross-examination, Smith testified, *inter alia*, that: CRA had made no findings of fact; CRA did not want to propose any assessment or reassessment until the CRA was certain or more certain; and CRA did not believe Iristel to be complicit in any wrongdoing.
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> [...]

> 96. By initially reassessing the 2019 year and later the 2020 year without regard to the facts and law applicable to the such audits and assessment, and by wrongfully and inordinately delaying the appeals process and then failing to confirm the reassessments to allow Iristel to file their tax appeal, the Defendants, negligently and/or deliberately ignored their statutory obligations, CRA's own protocols, the auditor's reports and recommendations favourable to Iristel, other policies and procedures and the harm that was causing Iristel.
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> 1. The Defendants negligently and/or deliberately disregarded CRA's findings, review, analysis and decisions in respect of the 2017 and 2018 years' audit finding of no adjustment and confirming the tax treatment of supplies knowing that the 2017 and 2018 year assessment and the 2019 and 2020 years' assessment were virtually identical and knowing Iristel would rely on the investigation CRA had done of Iristel's supply chain on information Iristel had no access to.
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> 97. The process undertaken by Defendants Smith, Ryan, Gallivan and Dong and the CRA employees was systemically tainted by their predisposition to reassess, to obfuscate and delay no matter what and for ulterior purposes.
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> [...]
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> 101. Defendants Smith, Ryan, Gallivan and Dong were motivated by self-interest, including the impact on their compensation and status by the CRA's TEBA ("Tax Earned by Audit") program.
>
> 102. Defendants Smith, Ryan, Gallivan and Dong unlawfully authorized the use of the audit power to put an end to all international wholesale VoIP telecommunication in Canada and targeted Iristel with the intent to harm them and with resultant harm. This misfeasance was carried out by Defendants Smith, Ryan, Gallivan, Dong and/or by other CRA employees at the direction, authorization, and permission, collectively or otherwise.

[17] They further argue that the request for damages is also related to the merits of the Assessments because it flows from, or is the result of, CRA's refusal to pay out the net tax

refunds, which is the subject of the Tax Court Appeals. They argue that the failure to pay the net tax refunds is what is asserted to be the cause of the alleged harm to Iristel.

[18] Iristel argues that its Claim is not about the net tax refunds that have been withheld, as the amounts claimed are more that $250 million, which is different from the $79 million currently withheld and at issue in the Tax Court Appeals. It asserts that instead, the Claim is about the CRA's conduct and the discretionary choices made in early 2020 during the Assessments. Iristel focusses on the allegations set out in paragraphs 74 and 75 of the Claim which allege breaches of procedural fairness:

> 74. CRA failed to afford procedural fairness to Iristel in any forum, failed to provide notice of or any opportunity to respond to any proposed adjustments, contrary to CRA's published policy thereon and the specific guarantee of the Gallivan.
>
> 75. CRA has engaged in a pattern of persistent, cat-and-mouse, obfuscation and delay for more than 2 years. CRA has refused regular and proper requests for disclosure of the bases of the assessments, including: declining to provide a T20 audit report, working papers, gross negligence penalty report or any record of any finding of fact; declining to provide any audit report or working paper following an April 20, 2020 request therefor to CRA's Appeals Division; declining to provide any disclosure following an April 21, 2020 request therefor through CRA's Access to Information and Privacy Directorate; declining to answer any question in relation to the assessments under cross-examination held June 10, 2020; and advising, through her counsel on August 31, 2020 that no disclosure of any record would be made absent a Court Order.

[19] It also relies on paragraphs 81, 86, 89, 96, 98, 101, 103 and 105 of the Claim, which claim that:

(a) "...ongoing activity prohibited disclosure of records to Iristel" (para 81);

(b) "[t]he Defendants owed to Iristel a duty of care to conduct itself reasonably and lawfully in furtherance of its statutory mandate..." (para 86);

(c) "[t]he Defendants negligently, intentionally and maliciously ignored their statutory obligations and misused the audit and assessment powers" to pursue action beyond their statutory authority for improper purpose and with the intent to harm (para 89);

(d) "[b]y initially reassessing the 2019 year and later the 2020 year without regard to the facts and law applicable to the such audits and assessment, and by wrongfully and inordinately delaying the appeals process and then failing to confirm the reassessments to allow Iristel to file their tax appeal, the Defendants, negligently and/or deliberately ignored their statutory obligations, CRA's own protocols, the auditor's reports and recommendations favourable to Iristel, other policies and procedures and the harm that was causing Iristel" (para 96);

(e) the Defendants actions denied Iristel procedural fairness and natural justice and breached implied and express common law and statutory duties and obligations owed to Iristel (para 98)

(f) the individual Defendants were motivated by self-interest (para 101)

(g) the Defendants "wrongful conduct" harmed Iristel's business operation (para 103);

(h) the CRA did not discourage the conduct of the individual Defendants and is liable for misconduct of its employees (para 105).

[20] Iristel asserts that the damages claimed are a result of this conduct and not the outstanding $79 million in net tax refunds. It contends that the tortious conduct of the Defendants is an independent cause of action that is separate from the validity of the Assessments, and is a cause of action that cannot be resolved through the Tax Court Appeals.

[21] In *Canada v Roitman*, 2006 FCA 266 [*Roitman*], the Federal Court of Appeal [FCA] considered the issue of the respective jurisdictions of the Federal Court [FC] and the TCC in claims relating to income tax assessments. In that case, the claim was a proposed class action; the plaintiff alleged that when the Crown reassessed him, it engaged in "deliberate conduct ...to deny.... the plaintiff the benefit of the law". He sought "damages for misfeasance in pubic office", "special damages, including costs of defending the proposed income tax assessments and in prosecuting the civil income tax appeal" and "punitive, exemplary and aggravated damages." The FCA found that the core of the claim related to the validity of the reassessment, which was within the jurisdiction of the TCC, and that the FC had no jurisdiction to award damages or any other relief in connection with the reassessment, including in respect of allegations of abuse of process on the part of the CRA. As the claim for damages could only succeed if the reassessment was found invalid, the claim was found to be premature. As stated at paragraphs 20, 21, 24 and 25 of the decision:

> [20] It is settled law that the Federal Court does not have jurisdiction to award damages or grant any other relief that is sought on the basis of an invalid reassessment of tax unless the reassessment has been overturned by the Tax Court. To do so would be to permit a collateral attack on the correctness of an assessment. ...
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> [21] It is also settled law that the Tax Court of Canada does not have jurisdiction to set aside an assessment on the basis of abuse of process or abuse of power...
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> [...]
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> [24] In the case at bar, the income tax assessment in issue is an assessment of Mr. Roitman's own tax liability. The true ground for the relief sought is the allegation that the assessment is contrary to the alleged teaching of this Court in *Franklin*. The damages are in reality sought on the basis of an invalid reassessment made on the basis of a wrong interpretation of the law. For all practical purposes, then, it is the very legality or correctness in law of the

> notice of reassessment which is at issue. This, clearly, is a matter within the exclusive jurisdiction of the Tax Court of Canada.
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> [25] Counsel for Mr. Roitman alleges abuse of process on the part of the Minister in issuing the notice of assessment. The alleged abuse is that of a deliberate incorrect interpretation of the law. The allegation assumes that the law has been incorrectly interpreted, which in turn assumes that the reassessment is invalid, a determination that can only be made by the Tax Court of Canada. To paraphrase the words of Hugessen J. in *Walsh* (supra, at paragraph 5), the relief based on the alleged deliberate actions of the Minister or of the Agency "would be a meaningless exercise when divorced, as is must be, from the substantial question as to the validity of the assessment itself". It is remarkable that the very question the Judge ordered to be decided prior to trial by the Federal Court is precisely the type of legal question that would normally fall within the very expertise and domain of the Tax Court of Canada. It is clear in the end that the claim for damages can only succeed if the reassessment is first found to be invalid. The Statement of Claim is, at best, premature.

[22] The Defendants acknowledge that more recently in *Myers v Canada (Attorney General)*, 2022 BCCA 160 [*Myers*], the British Columbia Court of Appeal [BCCA], relying on *Canada (Attorney General) v TeleZone Inc*, 2010 SCC 62 [*TeleZone*], refused to stay an action for misfeasance, negligence and abuse of public office relating to conduct by the CRA during tax reassessments, while the validity of the assessments were being challenged in the TCC. The BCCA found that the basis of the action was in tort and considered there to be concurrent jurisdiction over the subject matter in issue. In that case, the Court found that the appellants were not seeking to avoid the legal effect of the tax assessments, but instead were relying on their unlawfulness as a material fact supporting their tort claim. As stated by the BCCA at paragraphs 33-35 of that decision:

> [33] When TeleZone speaks of a party being content to “let the decision stand”, it refers to a party who accepts the legal force of the decision in the sense that they accept that they are bound to abide by the decision and do not seek in the provincial superior court to overturn the decision or nullify its effects. But *TeleZone*

> does not say that the party may not, as part of a properly framed civil cause of action, seek to prove the unlawfulness of that federal decision as a material fact supporting their claim for damages.
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> [34] Where, as in this case, there is concurrent jurisdiction over the subject matter in issue, a party may challenge the lawfulness of the decision in either or both venues. A party may well decide to first challenge the lawfulness of a decision in the Federal Court or Tax Court, taking advantage of the Court's expertise and familiarity with the particular subject matter, as was the case in *Garland*. But the litigant is not required to go to the Federal Court or Tax Court first, or at all. The party may choose to prove the unlawfulness of the decision as part of a civil tort claim in a provincial superior court, with the caveat that this is so only if the claim is not in effect a thinly veiled attempt to avoid the effects of the decision altogether (*TeleZone* at paras. 60–64), which I have determined is not the case here.
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> [35] Of course, if a party chooses to challenge the lawfulness of a decision in more than one venue, it cannot pursue both proceedings at the same time. The party must elect to proceed first in one venue or the other, but that choice is theirs to make. As the Court in *TeleZone* noted, "[a]ccess to justice requires that the claimant be permitted to pursue its chosen remedy directly and, to the greatest extent possible, without procedural detours": *TeleZone* at para. 19.

[23] However, the Defendants assert that the decision in *Myers* is distinguishable from the present case as *Myers* involved a net worth assessment provision that is not at issue here and this Court does not have concurrent jurisdiction over the subject matter in issue. Further, *Myers* must be resolved against the authorities from other provinces (*Ludmer v Canada (Attorney General)*, 2020 QCCA 697 [*Ludmer*]) and *Grenon v Canada Revenue Agency*, 2016 ABQB 260; aff'd 2017 ABCA 96 [*Grenon*]), which follow *Roitman*.

[24] In *Ludmer*, the Quebec Court of Appeal [QCCA] found that any remedy stemming from alleged abusive conduct relating to the assessments at issue was premature until a final judgment on the validity of the assessments by the TCC. The QCCA noted at paragraph 144 that, "the

validity of the assessments and the alleged abuse of conduct with regard thereto [could] not be separated in a meaningful way. The abuse (or lack thereof) in the CRA's assessing position [would] largely be determined or at least influenced by the validity of the assessments."

[25] Similarly, in *Grenon*, the Albert Court of Queen's Bench [ABQB] struck paragraphs of the claim that alleged the reassessments were improper, unlawful and invalid on that basis that they were outside the jurisdiction of the court and also stayed allegations in the claim alleging misfeasance in office on the basis that such allegations were premature. The ABQB found that a determination of whether the reassessment was invalid was a "necessary though not sufficient, precondition for a finding of misfeasance in public office" (para 97). The ABQB considered *TeleZone*, but found that it did not change the principle set out in *Roitman*; a finding that was also affirmed by the Alberta Court of Appeal. As explained at paragraphs 38-41, 43 and 46 of *Grenon* (ABQB):

> [38] In his brief, Grenon refers to the Supreme Court of Canada's decision in *Canada (Attorney General) v TeleZone Inc*, 2010 SCC 62, [2010] 3 SCR 585. He asserts that "The *TeleZone* decision has overtaken any notion that the TCC must rule on the Reassessments before this action can be continued."
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> [39] In my view, Grenon has misapprehended and over interpreted *TeleZone*. It is important to bear in mind that *TeleZone* was not a tax case. Rather, what was at issue there was a decision by the Minister of Industry Canada to reject TeleZone's application for a telecommunications license. It is true that the Supreme Court held that judicial review of that ministerial decision was not a necessary precursor to TeleZone's action for damages, ...
>
> [40] There are two features that distinguish this case from *TeleZone*. One is the applicable statutory regime and the other is that Grenon, unlike the claimant in *TeleZone*, is not "content to let the order stand".

> [41] First, the statutory framework in this case is significantly different from that before the Supreme Court in *TeleZone*. In *TeleZone*, the question was whether an action for damages could proceed in the Ontario superior court without prior judicial review of the ministerial decision by the Federal Court. ...
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> [...]
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> [43] In contrast to the Federal Court's concurrent jurisdiction in the circumstances articulated in *TeleZone*, the Tax Court, as noted above, has exclusive jurisdiction over assessments of tax. This jurisdiction has been interpreted rather broadly by the courts. For example, in *Canada v Addison & Leyen Ltd*, 2007 SCC 33, [2007] 2 SCR 793, the Supreme Court said at para 11:
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>> Reviewing courts should be very cautious in authorizing judicial review in such circumstances. The integrity and efficacy of the system of tax assessments and appeals should be preserved. Parliament has set up a complex structure to deal with a multitude of tax-related claims and this structure relies on an independent and specialized court, the Tax Court of Canada. Judicial review should not be used to develop a new form of incidental litigation designed to circumvent the system of tax appeals established by Parliament and the jurisdiction of the Tax Court. Judicial review should remain a remedy of last resort in this context.
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> [...]
>
> [46] I note that Grenon attempts to undermine *Roitman* on the basis that it was decided prior to *TeleZone*. Given the different statutory regimes at issue here and in *TeleZone* and given the Federal Court of Appeal's recent reference to *Roitman* in *Johnson 1*, I find that *Roitman* has not been overruled by *TeleZone*.

[26] In my view, the allegations in this case most closely parallel those in *Grenon*. While the Claim seeks relief in respect of the conduct of the CRA, the core of the Claim nonetheless turns on whether the CRA acted outside of its statutory authority in conducting the Assessments and withholding the net tax refunds from Iristel.

[27] Iristel contends that like in *Myers*, it is not making a collateral attack as it is not seeking to recover from this Court, as damages, the net tax refunds it is seeking in the Tax Court Appeals (*Myers* at para 43). It asserts that this distinguishes the present case from the others cited by the Defendants where the relief sought in the two proceedings was duplicative, or the relief sought or allegations made were clearly overlapping. Iristel further argues that the facts of this case can be distinguished from those in *Roitman*. It notes that in *Roitman*, the Crown sought to strike the statement of claim because it challenged the legality of the assessments, which was a matter exclusively within the jurisdiction of the TCC and with respect to which the plaintiff had waived his right to object and appeal. The Court found the claim was an abuse of process because the plaintiff had "relinquished his ability to exercise his statutory objection and appeal rights in respect of the tax assessments" (para 29).

[28] In my view, the additional ground for striking the claim does not render the overriding principle in *Roitman* inapplicable. *Roitman* remains good law: *M.S. c Canada*, 2021 CAF 225 at paragraphs 7-11. The relevant issue is whether the validity of the Assessments have been directly or indirectly put into issue by the Claim such that the allegations of improper conduct and procedural unfairness, and the damages sought, rely on a determination of the validity of the Assessments. In this case, the answer to this question is yes.

[29] At paragraphs 96 and 96-1 of the Claim (set out above and again below), Iristel challenges the basis for the Assessments by alleging that the Defendants ignored the ETA and reassessed the 2019 and 2020 year without regard to the applicable facts and law. It asserts that

the Assessments were conducted negligently with deliberate disregard to prior findings, review, analysis and decisions:

> 96. By initially reassessing the 2019 year and later the 2020 year without regard to the facts and law applicable to the such audits and assessment, and by wrongfully and inordinately delaying the appeals process and then failing to confirm the reassessments to allow Iristel to file their tax appeal, the Defendants, negligently and/or deliberately ignored their statutory obligations, CRA's own protocols, the auditor's reports and recommendations favourable to Iristel, other policies and procedures and the harm that was causing Iristel.
>
> 1. The Defendants negligently and/or deliberately disregarded CRA's findings, review, analysis and decisions in respect of the 2017 and 2018 years' audit finding of no adjustment and confirming the tax treatment of supplies knowing that the 2017 and 2018 year assessment and the 2019 and 2020 years' assessment were virtually identical and knowing Iristel would rely on the investigation CRA had done of Iristel's supply chain on information Iristel had no access to.

[30] The basis for the allegations of negligence, abuse of process and misfeasance is inextricably linked to the merits of the Assessments. It is hard to see how the impugned conduct would exist if the Assessments were found to be conducted properly and lawfully in accordance with the ETA. This is distinct from *Micromar International Inc v Micro Furnace Ltd*, [1988] FCJ No 836, cited by Iristel, where the allegations of breach of contract before the Superior Court of Ontario were extricable from the allegations of patent impeachment and, by counterclaim, infringement in the FC, neither having an effect on the other.

[31] Moreover, as set out in the overview to the Claim at paragraphs 10 to 12, the Claim is grounded in Iristel's alleged right to the withheld net tax refunds and the assertion that the

Defendants abused the legislation, process and authority during the Assessments in withholding the net tax refunds:

> 10. The Defendants became concerned with an identified vulnerability in the taxation of telecommunications. The Defendants did not address this concern with Iristel but instead, since October 2019, the Defendants **have abused the legislation, process and authority** for an unlawful campaign targeting and using Iristel to stop wholesale telecommunication traffic.
>
> 11. Despite having previously audited Iristel for compliance with the statutory regime for HST/GST collection, and finding no wrongdoing by Iristel, **the CRA has withheld net tax refunds from Iristel, knowing that its actions are not lawful**.
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> 12. Additionally, when confronted with Iristel's requests for reasons, information, documents, or any other support for their position, CRA has embarked on a years-long effort to hide information from Iristel and prolong the period **in which Iristel is deprived of its rightful tax remittances** and access to justice.
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> [Emphasis added]

[32] Similarly, while the damages sought do not expressly seek recovery of the net tax refund, the harms that are claimed (*i.e.*, the impact on Iristel's business, interest and penalties on overdue invoices and payments owed to customers, suppliers and service providers) arise from the financial impact of the net tax refunds being withheld from Iristel. As stated at paragraphs 19 and 21 to 23 of the Claim:

> 19. Although CRA had recognized the harm to Iristel of withholding its net tax refunds during audit, CRA withheld Iristel's September 2019 refund claim.
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> [...]
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> 21. By March 5, 2020, the net tax refunds claimed by Iristel and withheld by CRA totalled $79,879,671. CRA refused

> to pay net tax refunds to Iristel for periods commencing September 1, 2019.
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> 22. Iristel wrote to CRA, the Minister of National Revenue to outline the operational impact of withholding GST/HST paid to its suppliers.
>
> 23. CRA acknowledged the harm of impacting Iristel's cash flow on Iristel's operation.

[33] I agree with the Defendants, Iristel would not have brought the present action if the $79 million in net tax refunds had not been withheld. The torts and equitable claims have no independent foundation: they are advanced in this action on the basis that a right to the net tax refund exists: *Hester v Canada*, [2007] GSTC 172 (Ont. Sup. Ct.) at paras 53 and 54; leave dismissed [2008] GSTC 55 (Ont. Div. Ct.).

[34] In my view, it is premature to entertain the Claim while a fundamental issue that grounds the Claim – the validity of the Assessments and the entitlement to the net tax refunds – remains outstanding in the Tax Court Appeals, and it is only the TCC that can determine these issues.

[35] Further, it is inevitable that the outcome of the Tax Court Appeals will have an impact on merits of the Claim. The request for a stay is thus also supported by the principles of judicial economy.

[36] As set out earlier, the present action is grounded on an assumption that Iristel is entitled to the net tax refunds withheld. If the TCC finds that the Assessments are valid, it is difficult to see how Iristel could maintain its claim for damages suffered from an allegedly improper and

unlawful Assessment in the present claim. Indeed, even Iristel conceded at the oral hearing that such a finding could be used as a defence in the action.

[37] Similarly, if Iristel were successful in the Tax Court Appeals, this finding would assist in the present action as it would remove the need to litigate around the lawfulness of the Assessments. The evidence would be reduced to conduct and state of mind.

[38] Such a finding would also avoid the possibility of duplication of evidence and inconsistent findings. Indeed, if the action were to go ahead prior to the determination in the Tax Court Appeals, it would not be possible to defend or advance the action and to establish whether the conduct asserted was irrational and improper, without leading evidence as to the legitimacy and merits of the Assessments.

[39] However, any findings on these issues by the FC would not be binding on the TCC**,** but would need to be determined again by the TCC in the context of the Tax Court Appeals (s 12(1) TCA; s 299(3) ETA); there would be no efficiencies gained and a possibility of inconsistent findings.

[40] In my view, the principles of prematurity and judicial economy favour that a stay be granted.

(2) Will Iristel be unfairly prejudiced if a stay is granted?

[41] Further, I am also not persuaded that Iristel will be unfairly prejudiced by the requested stay.

[42] Iristel asserts that it continues to suffer financial hardship with the passage of time. It contends that it has a “burn-rate” of no less than $100,000 a month from accumulating fees and penalties on servicing its debts due to its cash flow deficit.

[43] However, as argued by the Defendants, the prejudice asserted arises from the net tax refunds withheld and the result of the Assessments. Thus, it depends on the status of the Tax Court Appeals and not the timing of the present action or any delay by the Crown. While I agree that the Tax Court Appeals have been the subject of many motions by the parties, on the record before me, I am unable to attribute the status of those proceedings to the actions of the Defendants.

[44] Iristel argues that because of its financial situation, a stay will only benefit the Defendants. It contends that if the proceedings are delayed further it may not be able to financially continue with the litigation. The questions in the litigation will then become moot. However, I do not see how incurring further costs in the present action now will assist Iristel, particularly where as I have already held, a finding on the validity of the Assessments is essential to the overall relief requested in the present action. In my view, it will be more cost efficient for Iristel to avoid duplication and any unnecessary legal steps that could be streamlined by the findings made in the Tax Court Appeals.

[45] The delay that Iristel fears relates to the status of the Tax Court Appeals to which it is an active party. I do not consider the requested stay to have a direct impact that would unfairly prejudice Iristel.

B. *Should the Court limit the stay and provide relief to Iris?*

[46] The Defendants indicated at the hearing that if a stay were granted, it would propose the stay be limited to 30 days after the decision of the TCC, and not until all appeals are final. It asserts that this strikes an appropriate balance between the efficiencies gained by allowing the stay and the considerations of Iristel.

[47] Iristel asserts that in addition to such time limitation, the interests of justice favour the Court recognizing and remedying the financial hardship to Iristel by ordering the CRA to provide security for the burn-rate of $100,000 per month during the period of the stay. It asserts that the Court has plenary powers to control the conduct of the legal proceedings before it (*Cunningham v Lilles*, 2010 SCC 10 at paras 19-20; *Lee v Canada (Correctional Service)*, 2017 FCA 228 at para 7; *Martinez v Canada (Communications Security Establishment)*, 2019 FCA 282 at para 8) and that section 44 of the *Federal Courts Act* provides authority for the relief requested.

[48] Section 44 of the *Federal Courts Act* confers jurisdiction on the FC to grant or award mandamus, an injunction, specific performance or the appointment of a receiver. It does not, however, alter the bases upon which the remedies it authorizes may be granted, or deal with the procedural requirements for bringing a request for such relief before the Court: *Habitations Îlot St-Jacques Inc v Canada (Attorney General)*, 2017 FC 535.

[49] There is no procedural basis on this motion to grant the relief requested. There is no provision under the *Federal Courts Act* or *Federal Courts Rules* for obtaining an advance on the damages requested. Nor could Iristel point to any authority in the jurisprudence where this type of relief had been granted and I do not find any foundation for granting such novel relief on the facts before me.

[50] As such, the request for further limitations on the stay is denied.

IV. Conclusion

[51] For all these reasons, the motion for a temporary stay of proceedings is granted on the timing proposed by the Defendants. There shall be no further restrictions on the stay imposed.

[52] At the hearing of the motion, the parties made brief submissions on costs. The Defendants requested that if the parties were unable to come to an agreement, costs should be awarded to the successful party in accordance with the Court's Tariff. Iristel submitted that in view of the nature of the motion, costs should be deferred and awarded in the cause.

[53] As I have not been advised of an agreement on costs, in my view, there is no reason to depart from the standard principles set out in the Court's Rules. Costs shall be awarded to the Defendants as the successful party on the motion, in accordance with the Court's Tariff.

ORDER IN T-748-22

THIS COURT ORDERS that:

1. The motion for a temporary stay of proceedings is granted until thirty (30) days after the determination of the proceedings in the Tax Court of Canada in 2021-226(GST)G and 2021-2215(GST)G.

2. The parties shall report back to the Court within thirty (30) days of judgment in 2021-226(GST)G and 2021-2215(GST)G with a joint timetable for the resumption of steps in the present action.

3. The costs of the motion are awarded to the Defendants in accordance with the middle of column III of the Tariff.

"Angela Furlanetto"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-748-22
STYLE OF CAUSE:	IRIS TECHNOLOGIES INC. v CANADA REVENUE AGENCY
PLACE OF HEARING:	HEARD BY VIDEOCONFERENCE
DATE OF HEARING:	SEPTEMBER 28, 2022
ORDER AND REASONS:	FURLANETTO J.
DATED:	FEBRUARY 8, 2023

APPEARANCES:

Leigh Somerville	FOR THE PLAINTIFF
Mireille Dahab	FOR THE PLAINTIFF
Nancy Arnold Kaitlin Coward Christopher Ware	FOR THE DEFENDANTS

SOLICITORS OF RECORD:

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Attorney General of Canada Toronto, Ontario	FOR THE DEFENDANTS