

Federal Court

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FEDERAL COURT
COUR FÉDÉRALE

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Between

DAVID CHARLES PENNER

20-JUN-2024

Modelisa Hennessy

Plaintiff

VAN

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and

His Majesty the King

Defendant

~~Writ of Mandamus in the form of a~~
STATEMENT OF CLAIM

Facts

1. This Claim is related to Tax Court of Canada case: 2023-2181(IT)I regarding taxation years 2003-2004 for debtor, DAVID CHARLES PENNER. Debtor is a trust in which the Minister of Finance, Canada holds legal interest.
2. David Charles Penner, Authorised Representative for DAVID CHARLES PENNER, is seeking the administration of justice.
3. On October 25, 2023, a Notice of Appeal was filed with the Tax Court of Canada which specified "*Claim 2: The August 10, 2023 Notice(s) of Confirmation for 2003 and 2004 are invalid because the full balance was paid on, or before, July 24, 2023.*"
4. The February 26th, 2024 Reply (2023-2181(IT)I) from the ATTORNEY GENERAL OF CANADA indicated: "*The Crown will bring a motion at the commencement of the hearing to quash the appeal on the basis that the issues raised are outside the Court's jurisdiction*"
5. On May 29, 2023, a CRA presentment to DAVID CHARLES PENNER for the combined assessed value of \$127,583.68 was accepted by david charles for DAVID CHARLES PENNER and assigned to Canada Revenue Agency for closure, and settlement using account 62X XXX 871 [Redacted].
6. The May 29, 2023 bill of exchange was not returned.
7. On June 20, 2023, a CRA presentment to DAVID CHARLES PENNER for the combined assessed value of \$111,113.10 was for set off, closure and settlement using account 6XXXXX871 [Redacted].

8. The June 20, 2023 bill of exchange was not returned.
9. david charles, on behalf of DAVID CHARLES PENNER, gave credit, and thereby was a creditor on May 29, 2023, and on June 20, 2023.
 - *"The Supreme Court of Canada says, just because a person owes a duty of loyalty in respect of some things which he does, it does not follow that he owes a duty of loyalty in respect of everything that he does..."Hodgkinson v. Simms [1994] 3 SCR 377, at page 464: "not every act in a so-called fiduciary relationship is encumbered with a fiduciary obligation..." <http://canlii.ca/t/1frpl>*
10. On July 24, 2023, david charles provided a Notice regarding the May 29, 2023 bill of exchange and the June 20, 2023 bill of exchange.
11. The July 24, 2023 Notice goes on to refer to the Bills of Exchange Act article 152(3) and then notes: *"Bob Hamilton/CRA has now lost the right to recourse against the principal DAVID CHARLES PENNER and/or the agent without recourse david charles."*

Issues to be resolved

12. This Claim parallels the Tax Court of Canada case 2023-2181(IT) because the Tax Court may not take jurisdiction over payment via a Bill(s) of Exchange. The Tax Court of Canada may take jurisdiction over this matter by the Tax Court of Canada Act article 18.15(3).
 - Tax Court of Canada Act R.S.C., 1985, c. T-2 article 18.15 (3): *Notwithstanding the provisions of the Act under which the appeal arises, the Court is not bound by any legal or technical rules of evidence in conducting a hearing and the appeal shall be dealt with by the Court as informally and expeditiously as the circumstances and considerations of fairness permit.*
13. Based on Articles 9 and 152(3) of the Bills of Exchange Act there is a public legal duty to act and that duty is owed to the Plaintiff.
 - According to Canada (Human Rights Commission) v. Canadian Liberty: *"if the right exists, the presumption is that there is a Court which can enforce it, for if no other mode of enforcing it is prescribed, that alone is sufficient to give jurisdiction to the [Queen's] Courts of justice".*
 - Bills of Exchange Act R.S.C., 1985, c. B-4 article 9: *"The rules of the common law of England, including the law merchant, save in so far as*

they are inconsistent with the express provisions of this Act, apply to bills, notes and cheques."

- Bills of Exchange Act R.S.C., 1985, c. B-4 article 152(3): *Where the holder of a bill refuses to receive payment under protest, he loses his right of recourse against any party who would have been discharged by that payment."*

14. There is a clear right to the performance of that duty, in particular:

a. Based on Articles 3 and 16(1) of the Bills of Exchange Act, the Plaintiff has satisfied all conditions precedent giving rise to the duty;

- Bills of Exchange Act R.S.C., 1985, c. B-4 article 3: *"A thing is deemed to be done in good faith, within the meaning of this Act, where it is in fact done honestly, whether it is done negligently or not."*
- Bills of Exchange Act R.S.C., 1985, c. B-4 article 16 (1): *"A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay, on demand or at a fixed or determinable future time, a sum certain in money to or to the order of a specified person or to bearer."*

b. Based on the above Facts, there was

- i. a prior demand for performance of the duty;
- ii. a reasonable time to comply with the demand unless refused outright; and
- iii. a subsequent refusal, or unreasonable delay, that was implied,

15. No other adequate remedy is available to the Plaintiff. Federal Court Form 149 - Rule 149 may result in a duplicate payment until this claim is resolved.

16. Based on (the above-noted) Article 18.15(3) of the Tax Court of Canada Act (informal procedure) an order like mandamus should be issued.

17. This action is being proceeded with as a simplified action at Winnipeg.

Relief Sought

The Plaintiff therefore claims as follows:


- (a) The Plaintiff wishes the trustee to settle and close this matter 2023-2181(IT) and any/all [Tax Court] related matters for DAVID CHARLES PENNER
- (b) Alternatively, the Plaintiff requires the Court to confirm that CRA has now lost the right to recourse against the principal DAVID CHARLES PENNER, and the agent without recourse david charles by article 152(3) of the Bills of Exchange Act.

Dated at Winnipeg on the 20th day of June 2024



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I HEREBY CERTIFY that the above document
is a true copy of the original *issued out of*
the Court on 20/06/2024
Dated 20/06/2024
 Modelisa Hennessy
Registry Officer