



[1] This matter was scheduled as a fixture before me today upon the applicant's application to restrain advertising and to stay proceedings.

[2] Last Friday, 6 March 2009, Mr Judd filed a memorandum advising he had that day filed judicial review proceedings in which it is claimed the Commissioner failed to act lawfully, fairly and reasonably in his dealings with the applicant. Orders sought include requiring the Commissioner to amend GST assessments and/or to accept late objections from the applicant in relation thereto.

[3] The issues raised by the judicial review proceeding impact directly upon the Commissioner's claim of a debt due, the issue by the Commissioner of a statutory demand, and subsequently upon the Commissioner's liquidation application.

[4] The applicant's applications for restraint and stay were formulated upon the basis, *inter alia*, that no debt was due to the Commissioner; that the applicant had lodged statutory objections to GST assessments that had not been determined; and that the effect of the withdrawal by the Commissioner of Track assessments was still to be ascertained.

[5] This morning I made it clear to Mr Judd that upon those grounds the applicant's applications would have been unsuccessful. I informed him that it is not the role of an Associate Judge in the Companies Court to consider objections to the rulings and processes of the Commissioner acting in accordance with the provisions of the Tax Administration Act. In brief, this Court, in those circumstances, has no authority to review those actions or processes. Accordingly there was no basis upon which this Court could have entertained a claim of a genuine dispute as to the debt claimed.

[6] In light of the late judicial review application made, the remaining matter for consideration by me upon the applicant's restraint and stay applications concerns the balance of convenience. Unless I consider the balance of convenience favoured the grant of a stay, then I should, notwithstanding the judicial review application, dismiss the applicant's applications.

[7] The Court is concerned that the applicant has left it so late to file the judicial review application. As early as 14 April 2008, Mr J G Russell, director of the applicant, warned the Commissioner that he could expect to shortly receive legal proceedings to compel the Commissioner to act in a reasonable manner and in accordance with the Tax Administration Act. By that time, the Commissioner's statutory demand had been served and liquidation proceedings had issued.

[8] However, both counsel agreed it was appropriate that I should adjourn the restraint and stay applications pending determination of the judicial review application. Both counsel accept considerations of prejudice did not arise in that outcome.

[9] Accordingly, I am adjourning the current applications to be called at the first case management conference of the judicial review application. In time, it will be a decision of the review Court whether or not the current applications need to be referred back to this Court for further consideration.

[10] The costs upon these applications are reserved.

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Associate Judge Christiansen