IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CIV-2014-404-000723
CIV-2014-404-000729
[2014] NZHC 1841

UNDER THE	Tax Administration Act 1994 and the High Court Rules
IN THE MATTER OF	Applications for transfer and consolidation of proceedings
BETWEEN	COMMISSIONER OF INLAND REVENUE Applicant
AND	BELL ROAD DEVELOPMENTS LIMITED, TARARUA STREET DEVELOPMENTS LIMITED AND MESSINES DEVELOPMENTS LIMITED Respondents in CIV-2014-404-723
	KUPURI INVESTMENTS LIMITED, CHRISTOPHER JOHN MASON AND TRUSTMAN SERVICES LIMITED AS TRUSTEE OF THE COLUMBIA TRUST Respondents in CIV-2014-404-729

Hearing: 31 July 2014

Appearances: M Deligiannis and K E Saint for Applicant
S R G Judd for Respondents

Judgment: 7 August 2014

JUDGMENT OF VENNING J

This judgment was delivered by me on 7 August 2014 at 2.00 pm, pursuant to Rule 11.5 of the High Court Rules.

Registrar/Deputy Registrar

Date..........

Solicitors: Crown Law, Wellington
Ladbrook Law Limited, Auckland
Copy to: S R G Judd, Auckland

[1] The Commissioner of Inland Revenue (the Commissioner) seeks orders:

(a) granting leave to commence these proceedings by way of originating application under Part 19 of the High Court Rules (HCR);

(b) transferring the challenge proceedings involving the respondents to the High Court;

(c) consolidating both sets of challenge proceedings;

(d) that, if the proceedings are transferred and consolidated, the provisions of rr 5.64 to 5.67 HCR apply to them; and

(e) for costs on these applications.

Background

[2] Bell Road Developments Limited, Tararua Street Developments Limited and Messines Developments Limited (together the Bell Group) successfully undertook three major property developments. Mr C J Mason, Kupuri Investments Limited, and Trustman Services Limited as trustee of the Columbia Trust (collectively the Mason Group) ultimately received the profit from the property developments. The challenge proceedings presently before the Taxation Review Authority (TRA) relate to income tax assessments for the 2004 to 2008 years arising from the property developments.

[3] The Commissioner notes that a profit of $10,426,850 was made from the property developments. The profits were however returned by Emborion International Limited (Emborion). Emborion returned the profit generated by the developments undertaken by the Bell Group on the basis the companies in the Bell Group were acting as its agents. Emborion was in receivership at the time and had accumulated tax losses. The net result is no tax was payable by Emborion. Mr J G Russell was the receiver of Emborion at all material times.

[4] The Commissioner has assessed the parties in the alternative:

(a) The Commissioner has included the profit from the property developments in the companies within the Bell Group's assessable income for the years in question. The Commissioner considers the Bell Group entered an arrangement to avoid returning the profit as assessable income for income tax purposes and that the arrangement constitutes a tax avoidance arrangement.

(b) The Commissioner has included the profit from the property developments in the Mason Group's assessable income for the years in question on the basis the profit derived by the Bell Group flowed to the Mason Group either directly from the Bell Group or through an associated entity, Development Management Limited. Again, the Commissioner's position is that the Mason Group entered an arrangement to avoid returning the profit as assessable income for income tax purposes and that this arrangement constitutes a tax avoidance arrangement.

The procedural steps to date

[5] The Bell Group commenced challenge proceedings against the Commissioner in the TRA on 19 August 2013. The Mason Group commenced its challenge proceedings in the TRA on 21 August 2103. The Commissioner has filed defences to both. The proceedings in the TRA have been stayed pending the outcome of these applications.

Preliminary matter – mode of application

[6] The Commissioner seeks leave to commence these proceedings by way of originating application. Mr Judd does not oppose that aspect of the application. There is ample authority to support the proposition that any such application for transfer from the TRA to this Court should be brought by way of originating application.[1]

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[1] High Court Rules, r 19.5; *Commissioner of Inland Revenue v Erris Promotions* (2002) 20 NZTC 17,818 (HC); and *Commissioner of Inland Revenue v Kensington Developments Limited* [2013] NZHC 3357, (2013) 26 NZTC 21-059 at [76].

[7] I grant leave accordingly.

The transfer application

[8] Section 138N(2) of the Tax Administration Act 1994 enables the Commissioner to apply to the High Court to have a challenge proceeding commenced in the TRA transferred to the High Court.

[9] The section does not provide any guidance or criteria upon which the application for transfer is to be determined. However, the section was discussed by the Court of Appeal in *Commissioner of Inland Revenue v Erris Promotions*.[2] The Court noted that the scheme of the legislation for the resolution of taxation disputes is that there are two first instant courts – the TRA and the High Court. There is no presumption that taxation disputes should normally be dealt with at first instance in the TRA. Where the taxpayer has commenced proceedings in the TRA the onus is on the Commissioner as the applicant seeking the transfer to provide reasons why the transfer should be granted. In doing so the Court must consider the factors relied on by the Commissioner and the reasons for the taxpayer's choice of forum against the background of the scheme of the legislation and the role of the TRA and the High Court in taxation disputes.[3]

[10] In *Commissioner of Inland Revenue v McIlraith*[4] Randerson J extracted the following principles from the Court of Appeal's decision in *Commissioner of Inland Revenue v Erris Promotions*:[5]

> [18] I have been assisted by the recent decision of the Court of Appeal in *Commissioner of Inland Revenue v Erris Promotions and Ors* (CA.175/02, 7 November 2002). Although strictly obiter, the following principles may be derived from paragraphs [19] to [27] of the Court's decision delivered by Glazebrook J:
>
> (a) Although there are no statutory criteria set out for transfer applications to the High Court under s 138N(2)(a)(ii), there is no legislative intent to change the role of the TRA and the High Court in taxation matters.

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2 *Commissioner of Inland Revenue v Erris Promotions* [2003] 1 NZLR 506, (2002) 20 NZTC 17,977 (CA).

3 At [22]–[23].

4 *Commissioner of Inland Revenue v McIlraith* (2003) 21 NZTC 18,112 (HC).

(b) The criteria set out in s 136(4) or s 138O may still considered if relevant in the circumstances of the case.

(c) The taxpayer has the initial choice of forum and the onus is on the Commissioner in seeking a transfer to provide reasons why that should occur.

(d) The Court is required to consider the factors relied upon by the Commissioner and the reasons for the taxpayer's choice of forum against the background of the scheme of the legislation and the role of the TRA and the High Court in taxation disputes.

(e) The TRA was designed to provide a more informal and less complex forum as evidenced by the anonymity provisions, and the fact that costs cannot be awarded in favour of any party. Although it is a specialist in taxation disputes, there is no presumption in the legislation that taxation disputes should normally be dealt with in the TRA at first instance.

(f) The High Court is the Court of first instance jurisdiction for major litigation and, in particular, where matters are complex and involve matters of major legal significance. That is also the case for taxation litigation.

(g) The amount of money involved does not necessarily equate with complexity but it does bear upon the issue of significance, both for the Commissioner and the taxpayers involved.

[11] In addition Randerson J identified two other factors relevant to the case before him. In *McIlraith* the taxpayer had previously brought proceedings in the High Court, challenging income tax for an earlier year. Also, the taxpayer had made a concerted attack on the integrity of the departmental officer(s) concerned including serious allegations of bias, bad faith and abuse of power. The Judge considered those factors supported transfer.[6]

[12] In support of the transfer in this case Ms Deligiannis submitted the Commissioner relied on the following factors:

(a) the complexity of arrangement;

(b) the significance of the litigation;

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6 At [23].

(c) the respondents had raised issues of administrative law; and

(d) the likelihood of appeal.

[13] As the starting point is that the respondents chose to commence in the TRA, it is helpful to consider the advantages to them of the proceedings remaining in the TRA. In general terms the advantages of the TRA are that the proceedings are confidential, relatively informal, and inexpensive. It is not necessary to instruct a lawyer to conduct the challenge. There are no Court hearing fees and costs are not usually awarded against a taxpayer if a challenge fails. Mr Judd also noted the TRA is a specialist jurisdiction and has been given the powers of a Commission of Inquiry in order to deal with tax disputes.

[14] However, each case must be considered on its own facts. In this case, for example, it does not seem the issue of confidentiality is an important feature to the respondents, or those associated with them. Mr Russell is well known in the area of tax litigation. There has been considerable publicity concerning Mr Russell's ongoing battles with the Commissioner through the Courts. Mr Mason is the only other individual directly interested in this case. He has not sworn an affidavit in support of the opposition to suggest confidentiality is important to him.

[15] The submission that the TRA is a specialist Tribunal should not be overstated given the comments of the Court of Appeal in *Erris Promotions* recognising that Parliament has provided for two first instance courts to resolve tax disputes:[7]

> … In our judicial system the High Court is the Court of first instance jurisdiction for major litigation and in particular where the matters are complex and involve matters of major legal significance. This is no different for taxation litigation.

[16] That leaves the features of the informality of the process in the Tribunal, the fact the TRA has the powers of a Commission of Inquiry, and cost considerations.

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7 *Commissioner of Inland Revenue v Erris Promotions* above n 2, at [22].

[17] Mr Russell, as the tax agent for the respondents, supports the proceedings remaining within the TRA because the actions of the Commissioner should be investigated and the TRA has the powers of a Commission of Inquiry.

[18] However, as Mr Judd acknowledged, such an argument is effectively contrary to the existing authorities which support the transfer of proceedings in cases where there are complaints or challenges based on administrative law reasons, a matter to which I return later.

[19] I accept the fact there are no hearing fees and that the costs are generally not awarded is a factor supporting the taxpayers' decision to issue in the TRA, as is the ability of the respondents to represent themselves, or to be represented by Mr Russell. It is therefore necessary to consider whether the reasons advanced by the Commissioner for transfer outweigh the factors favouring retention in the TRA in this case.

Complexity

[20] Ms Deligiannis submitted that, while the law on tax avoidance is relatively settled,[8] there are a number of complex steps in the arrangements in this case involving changes in ownership and management of the entities involved with a link back to Mr Russell directly or into companies he had significant beneficial ties to or control over. There are a number of financial transactions that will be analysed. Further, the legitimacy and existence of the debentures, agency agreements, management contracts and shareholdings will be in issue and will require review.

[21] In response Mr Judd submitted that the matter was straightforward. The Commissioner's use of phrases or terms such as "convoluted", "complex", "complicated", "intricate", "circular", "layered", "purported" and "wiring diagram" were pejorative and did not themselves make the underlying transactions complex. He submitted the position was very simple. Emborion was in receivership. Mr Russell, as receiver at the time, did not want the personal liability that could have attached to him as receiver if the property developments were unsuccessful so

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8 *Ben Nevis Forestry Ventures Ltd v Commissioner of Inland Revenue* [2008] NZSC 115, [2009] 2 NZLR 289.

agency agreements were put in place involving the Bell and Mason Groups in order to carry out the property developments. Mr Mason was involved because he was an experienced property developer. Mr Judd submitted it was essentially no more complicated than that. Mr Judd submitted that the facts were not in dispute. At most he suggested there might be the need to call expert evidence as to whether the actions of Mr Russell as receiver were reasonable.

[22] Mr Russell also submits in his affidavit in opposition to the transfer that there is no significant complexity in respect of issues involving tax avoidance and there is no dispute as to the new factual transactions.

[23] In response Ms Deligiannis submitted that Mr Russell had conceded the transactions were complicated. She referred to a passage in Mr Russell's interview with the Department's officers in which Mr Russell had said:[9]

> Yeah, well it is and you know, I mean a lot of people say, 'why do you', in fact I've been criticized over the years for having complicated structures. Why do you have these compli, ah, complicated structures. Well there's a damn good reason because ah, development projects, I've seen a lot of them go belly up and it costs a great deal of money when that happens and a great deal of time to try and sort it all out and so on, and you've just gotta protect yourself and in fact the more you do protect yourself like that, the less likely it is that you'll go belly up.

[24] With respect to the respondents' submissions on this point, I do not consider the matter to be quite as straightforward as Mr Russell would have it.

[25] However, I do accept Mr Judd's submission that not much can be read into Mr Russell's comments in the course of the interview. In the questions leading up to the comment by Mr Russell in [23] above the discussion was as follows:[10]

> Ms Watt: I guess we just wanted to make sure that we had um, the structure right.
>
> Mr Russell: Hm, well you've got the structure right.
>
> …
>
> Mr Hutchins: And I think we've got a better understanding now?

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9 At 27 of the interview.
10 At 26 of the interview.

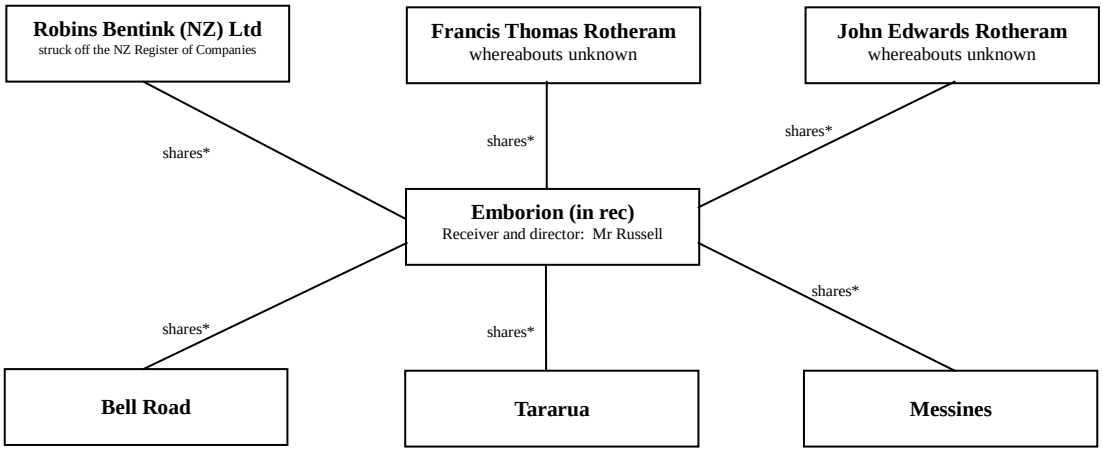
Mr Russell: Yeah.

Mr Hutchins: It's um, I think it's a reasonably straight forward structure.

[26] In context I accept that Mr Russell had not conceded the arrangements were themselves complicated.

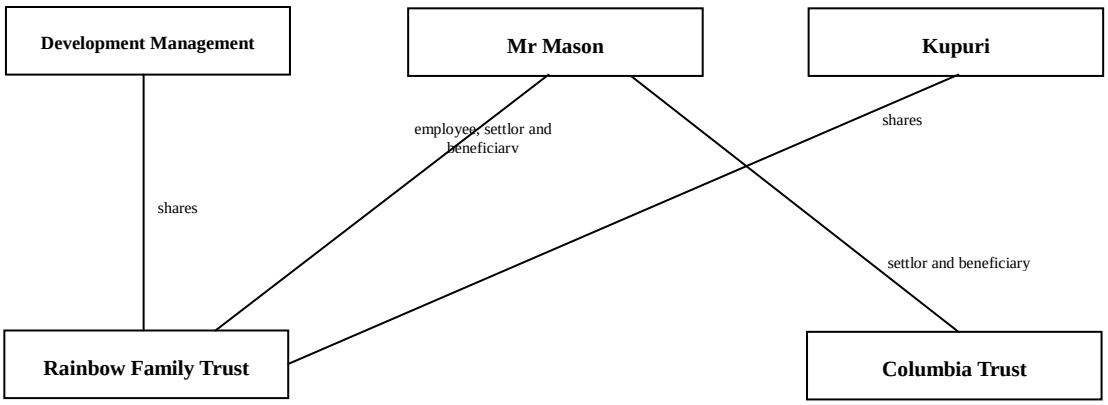
[27] Nevertheless the fundamental features of the arrangement will have to be considered in a commercially and economic realistic way. That will not necessarily be limited to the considerations identified by Mr Judd.[11]

[28] The ownership structure of the development companies is as follows:



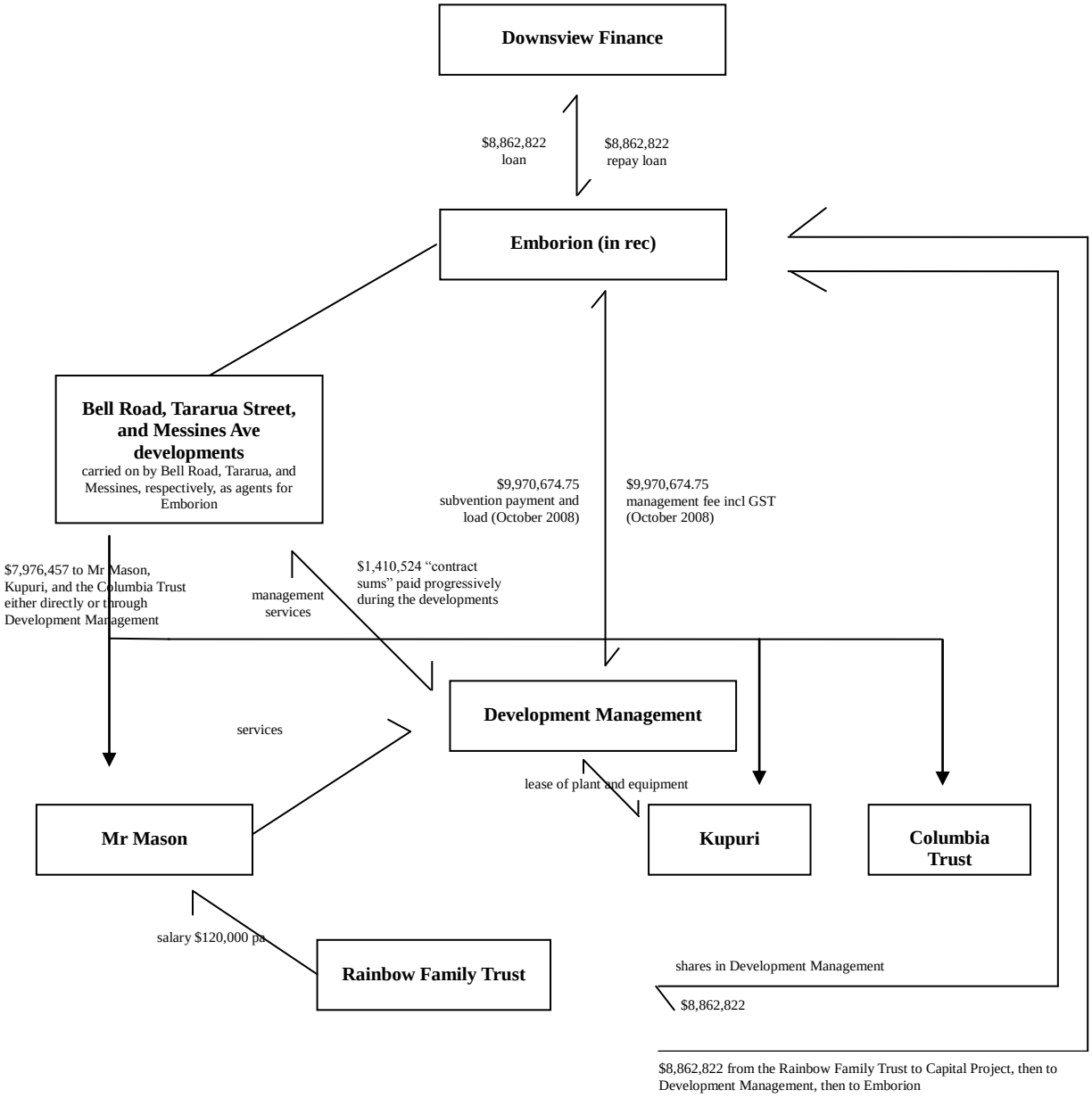
*shares held by Downsview Nominees on bare trust

[29] The relationship between Development Management Ltd, Mr Mason, Kupuri, the Rainbow Family Trust and Mr Mason and the Columbia Trust is as follows:



11 *Ben Nevis Forestry Ventures Ltd v Commissioner of Inland Revenue*, above n 8, at [109].

[30] The following diagram shows the transactions and money flows involved:



[31] Further, as I understand it, not all facts are agreed as is suggested by the respondents. For example, Ms Deligiannis took the Court to an exhibit to Ms Watts' affidavit which disclosed a number of transactions between the companies within the Bell Group. She advised the Court that she understood those transactions were disputed. The identification of and explanation for the transactions in issue are contained in some seven pages.

[32] Finally on this point I note that in a minute issued by the TRA following a directions hearing on 20 November 2013 Judge Sinclair recorded that Mr Russell

estimated the hearing could take 20 full days. That is hardly consistent with the respondents' submission the matter is straightforward and not at all complex.

[33] In summary on this point I do not consider the matter to be as straightforward as suggested by Mr Judd for the respondents. At the very least it must be said the proceedings are of moderate complexity.

The significance of the litigation

[34] The approximate basic tax assessed in respect of the Bell Group is $3.65 million and, in respect of the Mason Group (in the alternative) $3.725 million. Ms Deligiannis accepted that the amount did not, of itself, support a submission of complexity but made the point that nevertheless it was not an insignificant sum of money. Certainly tax disputes involving sums of that nature can properly be dealt with before the TRA.

[35] Nevertheless, the fact the tax in dispute is in the region of $3.5 million, and that there are a limited number of parties in the Bell and Mason Groups, is relevant to the TRA's advantage regarding costs. For example, in a case such as *Erris*, where a large number of very small investors/taxpayers were each affected, the issue of costs in the High Court may be of considerable significance to each of them individually. Where however, as here, there are a limited number of parties affected and the amount of tax in dispute is in excess of $3.5 million, the argument that the costs in the High Court count against a transfer does not hold as much weight. I do not suggest it is an absolute answer, but it provides a partial answer to the costs advantage of the TRA.

[36] Ms Deligiannis also argued that the case was of some precedential value. In response Mr Judd submitted that, at a general level, the use of a company with tax losses to offset tax payable on income earned by other companies is not in any way novel. However, the matter is not quite as straightforward as that. If the arrangements in the present case are not found to amount to tax avoidance there is potential for broader application of the structures and methods employed by Mr Russell in the present case. Ms Deligiannis submitted that there are a number of other cases with taxpayers associated with Mr Russell and/or Mr Mason where

similar issues could arise. There is however no direct evidence of that. I accept that in principle there could be some precedential value in the case, but in the absence of any direct evidence about the other cases that matter cannot be taken any further.

Issues of administrative law

[37] Mr Judd accepted that, in light of the relevant authorities, aspects of the challenges raised by the respondents did support a transfer. He acknowledged that was a major issue facing the taxpayer's opposition to transfer in this case.

[38] In the notice of claim the respondents allege a number of administrative law matters impugning the integrity and conduct of the Inland Revenue officials, including:

(a) the assessments were statute barred and the opinion of the Commissioner was not lawfully formed to set aside the statute bar;

(b) the assessments were invalid due to a vendetta practised by the Commissioner against Mr Russell and Mr Mason;

(c) the assessments were made without considering the provisions of s 6 of the Tax Administration Act 1994;

(d) the assessments were made without considering the provisions of the New Zealand Bill of Rights Act 1990;

(e) the Commissioner's officers did not have the delegated authority of the Commissioner to act as they did; and

(f) the Commissioner's officers did not comply with the Commissioner's policy statement on tax avoidance and consequently were not empowered to invoke the tax avoidance provisions against the respondents.[12]

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[12] Bell Group's and Mason Group's Notice of Claim, at para 9.

[39] Also in his affidavits in opposition Mr Russell maintains the application to transfer is continued harassment by the Commissioner and her officers of him and his clients.

[40] However, I note that the Commissioner does not, in every case, seek to have cases involving Mr Russell transferred from the TRA to the High Court.

[41] Also, in *Dandelion Investments Limited v Commissioner of Inland Revenue* the Court of Appeal noted:[13]

> … in undertaking a lengthy examination of the departmental processes concerned the Authority exceeded the scope of its statutory powers. … the Authority's role remained one which was concerned with the correctness of the assessment. It did not extend to conducting what was effectively a broad-based judicial review of the process leading up to the Commissioner's assessment and disallowance of the objection and subsequent conduct of the proceeding before the authority.

[42] In *McIlraith* Randerson J held that the fact a concerted attack was made on the integrity of the departmental officer(s) concerned supported the transfer to the High Court.[14]

[43] The approach adopted by Randerson J in *McIlraith* was approved and applied by Fisher J in *Commissioner of Inland Revenue v Deepsea Seafoods (No. 1) Ltd*.[15] The Judge noted that another reason favouring the High Court as the appropriate forum may be there are also proceedings in the High Court or there are allegations of bias, bad faith, abuse of power, or lack of integrity on the part of departmental officers.[16]

[44] I acknowledge Mr Judd's submission that, in the absence of extant judicial review proceedings in this Court, the Court's primary role, just like the TRA, would be to focus on the correctness or otherwise of the assessment from a legal point of view. Nevertheless, the Bell and Mason Groups have chosen to raise these particular issues in their notices of assessment in the knowledge of the existing state of

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13 *Dandelion Investments Limited v Commissioner of Inland Revenue* [2003] 1 NZLR 600, (2003) 21 NZTC 18,010 (CA) at [90].

14 *Commissioner of Inland Revenue v McIlraith*, above n 4 at [19].

15 *Commissioner of Inland Revenue v Deepsea Seafoods (No. 1) Ltd* (2004) 21 NZTC 18,469 (HC).

16 At [18](f).

authorities confirmed by *McIlraith.* The fact they have raised such challenges supports transfer to this Court.

The likelihood of appeal

[45] The likelihood of appeal is a further feature identified as a factor that may support the transfer. Mr Judd submitted that it was wrong in principle to take that into account. Parliament had provided rights of appeal from the TRA to this Court and the Court of Appeal.

[46] Mr Judd acknowledged that his submissions in this regard followed the submissions he made in *Commissioner of Inland Revenue v Kensington Developments Ltd*.[17] That decision is under appeal to the Court of Appeal. For present purposes I adopt the reasoning of Allan J in response to Mr Judd's submissions in that case as follows:[18]

> **Likely appeal**
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> …
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> [63] Mr Judd is highly indignant at the submissions for the Commissioner on this point. He maintains that it is not appropriate " … and may be an abuse of process … " for any party to make a submission that it would be likely to appeal against an adverse decision before the decision had been delivered. To advance that submission at this point is, Mr Judd submits, to exert improper pressure on the Tribunal at first instance. It also undermines the importance and integrity of that Tribunal.
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> [64] I do not accept Mr Judd's submission. It is well established that the likelihood of an appeal from a first instance decision is a highly relevant factor to the determination of an application under s 138N(2). The prospect of an appeal is routinely discussed pre-trial in a variety of situations. In the present case I consider that the prospect of an appeal is high. A relatively large sum is involved and any judgment is likely to carry precedential value. The Commissioner says she is likely to appeal against an adverse judgment. For his part Mr Russell (and therefore Kensington) is well familiar with the legal process and greatly experienced in exercising rights of appeal. I draw the inference that an appeal may be expected if the challenge does not succeed.

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17 *Commissioner of Inland Revenue v Kensington Developments Ltd*, above n 1.

18 At [63]–[64] (citations omitted).

[47] In *Erris Promotions* the Court of Appeal implicitly acknowledged that the prospect of more than one appeal supported the transfer.[19] At [25] the Court said:

> ... It does, however, make the cases financially significant both for the Commissioner and the investors as a group, and it therefore makes appeal (and more than one appeal) more likely. Starting at TRA level, while it may have the advantage of an earlier hearing date for the first instance hearing of these cases, this would thus not necessarily mean less delay in final resolution as it would add a further possible level of appeal.

[48] Where, as here, Parliament has provided for two rights of appeal without leave on an *Austin Nichols* basis from the TRA,[20] I would not place particular weight on the number of potential appeals as such, but the overall delay in resolution of the proceedings because of, inter alia, those potential appeals is relevant. I accept that any appeal would be taken in good faith by whichever party may be unsuccessful at first instance. But it is not the bona fides of the appellants that are in issue. It is the length of the process overall.

Summary - transfer

[49] Having regard to the above factors and looking at the matter overall the Commissioner satisfies the Court in this case that there are sufficient factors supporting transfer of the proceedings to this Court to counterbalance the decision of the Bell and Mason Groups to issue the proceedings in the TRA in the first place and the advantages to them of the proceedings remaining in the TRA. The Commissioner satisfies the onus on her in the circumstances of this case.

Consolidation

[50] The Commissioner also seeks consolidation of the two cases once transferred. Mr Judd submits that the Commissioner wants the two proceedings consolidated because she has wrongly assessed the same income to two different groups of taxpayers and is effectively asking the Court to decide which assessment is correct. He submitted the Commissioner is not entitled to do that.

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19 *Commissioner of Inland Revenue v Erris Promotions*, above n 2.

20 Taxation Review Authorities Act 1994, ss 26 and 28; *Austin, Nicols & Co Inc v Stichting Lodestar* [2007] NZSC 103, [2008] 2 NZLR 141.

[51] The application for consolidation is made under HCR r 10.12. The discretion under the rule is a broad one to be exercised in accordance with the interests of justice.[21]

[52] Mr Judd referred to s GA1(6) of the Income Tax Act 2007 and s GB1(2) Income Tax Act 2004. He submitted there was no such thing as an alternative assessment which was the effect of the Commissioner's assessments in the present case. He submitted that the Bell and Mason Groups had the right as individual taxpayers, to challenge the assessments against them on the merits. They should not be forced to have their challenges consolidated and heard together with another taxpayer's challenge. The Bell Group should be able to argue they are not responsible for tax, inter alia, on the basis the Mason Group has been assessed as liable, (and presumably the Mason Group should be entitled to argue that they are not liable for tax because the Bell Group has been assessed for the tax).

[53] The Commissioner relies on the decision of *O'Neil & Ors v Commissioner of Inland Revenue*.[22] Mr Judd submits *O'Neil* does not support the Commissioner's approach in the present case. Counsel however acknowledged that the issue of whether these were effectively alternative assessments and whether the Commissioner's approach was permissible or not was not for determination by this Court on this particular application.

[54] There is a suggestion in Mr Russell's affidavit of an agreement that the two cases would be heard independently of each other, but that is not accepted. Mr Yanko puts that in dispute in his affidavit in reply. I deal with the matter on the basis of first principles as to whether consolidation is appropriate.

[55] The short point in answer to Mr Judd's submission on behalf of the respondents is that the tax assessed arises out of the relationship between Emborion, the Bell Group and the Mason Group. The relationships between them are interrelated and interlinked. There will be a significant degree of overlap in terms of the factual issues in the background to both assessments. An important consideration

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21 *Medlab Hamilton Ltd v Waikato District Health Board* (2007) 18 PRNZ 517 (HC) at [8].

22 *O'Neil & Ors v Commissioner of Inland Revenue* [2001] UKPC 17, (2001) 20 NZTC 17,051.

supporting consolidation is the desirability of avoiding the possibility of conflicting findings of fact. Consolidation will also avoid repetitive submissions on the law.

[56] The separate interests of the Bell and Mason Groups can be provided for. As is implicit in Mr Russell's submissions in his affidavit, each of the Bell and Mason Groups will, if they wish, be entitled to be separately represented and make their own cases in relation to their respective positions.

[57] Overall, I am satisfied that the interests of justice favour consolidation.

The application of High Court Rules 5.64–5.67

[58] Mr Judd acknowledged that in the event the proceedings were transferred to this Court and consolidated then High Court Rules 5.64 to 5.67 should apply.

Summary/results

[59] The Commissioner is granted leave to bring this application by way of originating application.

[60] Both sets of challenge proceedings are transferred to be heard in this Court.

[61] The challenge proceedings are to be consolidated so that both proceedings are to be heard at the same time. Any further directions in relation to the conduct of the hearings can be made at a case management conference and/or by the trial Judge.

[62] The provisions of High Court Rules 5.64 to 5.67 are to apply to the transferred challenge proceedings as if they had been transferred from the District Court to this Court.

Costs

[63] There is no reason why costs should not follow the event in this case. The Commissioner is to have costs on a 2B basis. However, the costs are to be calculated on the basis of one set of proceedings. I do not allow for second counsel. The

Commissioner is to have disbursements in respect of both proceedings. The disbursements are to include counsel's reasonable travel and related expenses.

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Venning J