

Federal Court of Appeal



Cour d'appel fédérale

Date: 20160606

Dockets: A-377-14  
A-378-14

[ENGLISH TRANSLATION]

Citation: 2016 FCA 169

CORAM: GAUTHIER J.A.  
SCOTT J.A.  
DE MONTIGNY J.A.

DOCKET: A-377-14

BETWEEN:

CARL SAMSON

Appellant

and

HER MAJESTY THE QUEEN

Respondent

DOCKET: A-378-14

BETWEEN:

ARMAND SAMSON

Appellant

and

**HER MAJESTY THE QUEEN**

**Respondent**

Hearing held at Québec, Quebec, on June 2, 2016.

Judgment delivered at Québec, Quebec, on June 2, 2016.

Reasons delivered at Ottawa, Ontario, on June 6, 2016.

REASONS FOR JUDGMENT BY:

SCOTT J.A.

CONCURRED IN BY:

GAUTHIER J.A.  
DE MONTIGNY J.A.

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**REASONS FOR JUDGMENT**

**SCOTT J.A.:**

[1] In a decision rendered on July 7, 2014, Mr. Justice Tardif (the Judge) of the Tax Court of Canada (TCC) granted the respondent's motion and dismissed the appellant's appeal under rules 64 and 125 of the *Tax Court of Canada Rules (General Procedure)*, SOR/90-688a, on the ground that the latter had failed to prosecute the appeal with due dispatch. The appellant now appeals to this Court.

[2] These reasons apply to the appeals under docket Nos. A-377-14 and A-378-14, because counsel for the parties raised the same arguments in both cases, which involve the same facts. Since the parties used the appeal book filed in A-378-14 at the hearing, I will do the same in these Reasons. Since these matters were not consolidated, two separate judgments will be delivered.

[3] After reading the Judge's decision and his reasons and carefully examining the facts, which begin in 2004, and reviewing the numerous motions brought before the TCC and the ensuing orders, I am of the view that the evidence before the Judge did indeed point to the

conclusion that the appellant had not diligently prosecuted his appeal. Indeed, the Judge's reasons could have been more detailed and precise in that regard. The fact does remain that his conclusion was correct, in view of the record.

[4] According to the appellant, the Judge erred in dismissing his appeal despite noting flaws in the conduct of the case by his counsel (appeal book, vol. 3, page 541). The appellant submits that the Judge deprived him of his rights by relying solely on the behaviour of his counsel, Mr. Sirois. That submission must be rejected. First, the Judge notes that the case needlessly became more complicated, but this does not concern the conduct of the case by Mr. Sirois. He also notes that the situation is not that simple and that, in addition to Mr. Sirois's incompetence or lack of experience, there was another hypothesis to consider, namely [TRANSLATION] "[T]hat there may be an advantage in delaying the case, in delaying the outcome of the case" (transcript of June 12, 2014 hearing, page 53, lines 14 to 16; appeal book, vol. 3, page 540).

[5] In my view it was open to the Judge to conclude that the appellant had failed to act with due dispatch and had contributed to, among other things, the failures to comply with the orders of the TCC within the required time. The appeal was not dismissed on the sole basis of Mr. Sirois's late attempt to make up for the failure to file a list of documents that had to be filed on August 15, 2012 under the order made by Mr. Justice Hogan. It is to be noted that the appellant's first attorney, Ms. Lévesque, said at the time that she was bringing her motion for removal of solicitor of record on February 25, 2013, and I quote: [TRANSLATION] "Well it's still the client who's saying 'wait, wait.' Because, on my end, it's the client who has to provide me with what's requested . . . so until the client cooperates, it's wait, wait, wait, wait. It's always

wait, wait” (transcript of hearing before the Honourable Madam Justice Lamarre, appeal book, vol. 1, page 73).

[6] Moreover, it is clear from the evidence that the appellant personally received a copy of the March 11, 2013 order of Lamarre J. for the payment of costs in the amount of \$1,500 upon receipt. It is worth mentioning that the appellant attended the pre-trial conference on July 19, 2013. At that time, Mr. Sirois promised that his client would pay costs after it was pointed out that payment was overdue (appeal book, vol. 2, page 220). However, the aforementioned amount was not paid until October 7, 2013.

[7] At that pre-trial conference, the appellant’s counsel, Mr. Sirois, still in the presence of the appellant, confirmed that he was ready to proceed on the basis of the list of documents filed by the respondent. The appellant had to know that the documents which he claims are essential before us were not on that list.

[8] The appellant is ultimately responsible for prosecuting his appeal with due dispatch. The law is well settled: a party cannot avoid his duties by blaming his counsel, except in the most serious cases. As this Court pointed out in *Donovan v. Canada*, 2000 F.C.J. No. 933, 2000 DTC 6411, at paragraph 7, even if mistakes were made by the appellant’s counsel, it is still necessary that the party who has been deprived of his right has not placed himself in that situation as a result of his own carelessness, mistake or negligence.

[9] In this case, on the basis of the evidence of record, this Court is not satisfied that the Judge made his decision on the sole basis of the actions of counsel. Therefore, he properly found, in exercising his discretion, that the appellant had failed to act with due dispatch.

[10] Since the Judge made no error warranting the intervention of this Court, this appeal will be dismissed with costs of \$2,500 per docket, inclusive of taxes and disbursements.

“A.F. Scott”

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J.A.

“I concur.  
Johanne Gauthier, J.A.”

“I concur.  
Yves de Montigny, J.A.”

Certified true translation,  
François Brunet, revisor.

**FEDERAL COURT OF APPEAL**

**SOLICITORS OF RECORD**

**DOCKETS:** A-377-14  
A-378-14

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**STYLE OF CAUSE:** CARL SAMSON v. HER  
MAJESTY THE QUEEN

**DOCKET:** A-378-14

**STYLE OF CAUSE:** ARMAND SAMSON v. HER  
MAJESTY THE QUEEN

**PLACE OF HEARING:** QUÉBEC, QUEBEC

**DATE OF HEARING:** JUNE 2, 2016

**REASONS FOR JUDGMENT BY:** SCOTT J.A.

**CONCURRED IN BY:** GAUTHIER J.A.  
DE MONTIGNY J.A.

**DATED:** JUNE 6, 2016

**APPEARANCES:**

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AND FOR THE APPELLANT  
ARMAND SAMSON

Martin Lamoureux

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HER MAJESTY THE QUEEN

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