

Date: 20070626

Docket: 07-A-23

Citation: 2007 FCA 249

Present: EVANS J.A.

BETWEEN:

RALPH THOM

Applicant

and

HER MAJESTY THE QUEEN

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on June 26, 2007.

REASONS FOR ORDER BY:

EVANS J.A.

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REASONS FOR ORDER

EVANS J.A.

[1] Ralph Thom has brought a motion in writing pursuant to Rule 369 of the *Federal Courts Rules* requesting an extension of time to file a notice of appeal from a decision of the Tax Court of Canada, which had dismissed his appeal against the reassessments of his income tax liability for the taxation years 1999 and 2000.

[2] Mr Thom's motion is dated April 20, 2007. The judgment of the Tax Court against which Mr Thom wishes to appeal was delivered orally from the Bench on August 16, 2004, and the written judgment was signed by the Judge on August 31, 2004. An appeal to this Court from a final judgement of the Tax Court must be commenced within 30 days from the date of the judgment:

Federal Courts Act, R.S.C. 1985, c. F-7, paragraph 27(2)(b). Thus, Mr Thom has requested an extension of time more than two and a half years after the time for appealing expired. The respondent opposes the motion.

[3] In exercising its discretion to grant an extension of time, the Court must consider, among other things, the length of the delay, and whether, before the time for appealing expired, the individual had an intention to appeal; whether there are circumstances justifying the delay; whether the appeal would have any merit; whether the respondent would be prejudiced by the extension of time requested; and whether, in all the circumstances, it would be in the interests of justice to grant the extension. I shall briefly consider these factors.

[4] Length of the delay: When Parliament has stated that an appeal must be commenced within 30 days. A delay of more than two and a half years is therefore substantial. This factor militates against granting the extension.

[5] Intention to appeal: Mr Thom has provided no evidence that, before the end of October 2004 when the appeal period expired, he intended to commence an appeal. Indeed, he does not allege in his motion that he had this intention. He first contacted the Court in September 2006 respecting an appeal, but his material was returned because he had not provided the necessary basic identity and contact information. The Registry provided him with a copy of the *Federal Courts Rules*. He subsequently attempted to file a motion for an extension of time, but again his material was not

accepted because it did not comply with the Rules. When he went to the local office, Registry staff explained to him how to compile a motion record.

[6] This factor does not favour granting the extension.

[7] Special circumstances: Mr Thom says that he did not file a notice of appeal earlier because he was advised by an official of the Canada Revenue Agency after his appeal was dismissed that “the matter was under investigation” and that he did not receive a letter from the Agency stating that “the decision was final” until two years later. Mr Thom has not produced this letter, nor provided an affidavit or any other evidence to support his vague allegations. The respondent denies that the Tax Court decision was under investigation and states that there is no record of any contact with Mr Thom after the Tax Court dismissed his appeal.

[8] In view of the absence of evidence supporting Mr Thom’s allegations, other than his own unsworn statements, I cannot afford this factor much weight.

[9] Merit in an appeal: Mr Thom does not indicate in his motion on what grounds he wishes to appeal. Since he elected to proceed in the Tax Court by way of the informal procedure (*Tax Court of Canada Act*, R.S.C. 1985, c. T-2, section 18), he may only appeal on the limited grounds set out in subsection 27(1.3) of the *Federal Courts Act*. In essence, these grounds are restricted to errors of law, findings of fact supported by no evidence, and procedural unfairness.

[10] Mr Thom's failure to address these grounds in his motion, or to provide any information that would enable the Court to assess whether an appeal would have any prospect of success, militates against the grant of an extension of time.

[11] Prejudice to the respondent: The respondent states that it would be prejudiced if Mr Thom were permitted to commence an appeal so long after the time for appealing had expired. The Canada Revenue Agency was entitled to assume, after a delay, that there would be no appeal from the Tax Court's decision, and to act on the assumption that the matter was closed.

[12] Although the respondent did not make a more specific allegation of any actual prejudice that it would suffer if Mr Thom were permitted to appeal, this factor weighs against granting the extension.

[13] The interests of justice: Mr Thom is representing himself in this matter. I shall assume that he is not a lawyer and has no experience of litigation in this Court. Because most people are not familiar with the litigation process, the Court typically allows self-represented appellants some latitude when they fail to comply with the Rules, in order to enhance individuals' access to justice. And, as happened in this case, the Registry assists self-represented litigants.

[14] Nonetheless, litigation is a serious business which consumes public resources and, in fairness to the other party, the Rules governing it apply to everyone, including self-represented litigants. Neither the Registry nor the Court can provide legal advice to litigants, actual or potential.

Mr Thom appears to have made no effort to familiarise himself with the Rules or to provide a clear and credible explanation for his failure to commence an appeal within the prescribed time, or soon afterwards.

[15] This factor does not assist Mr Thom.

[16] For these reasons, Mr Thom's motion is dismissed and his request for an extension of time is denied.

“John M. Evans”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: 07-A-23

STYLE OF CAUSE: *Ralph Thom v.
Her Majesty the Queen*

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: Evans J.A.

DATED: June 26, 2007

WRITTEN REPRESENTATIONS BY:

Mr. Ralph Thom

ON HIS OWN BEHALF

Kandia Aird

FOR THE RESPONDENT

SOLICITORS OF RECORD:

John H. Sims, Q.C.
Deputy Attorney General of Canada
Ottawa, Ontario

FOR THE RESPONDENT