

Federal Court of Appeal



Cour d'appel fédérale

Date: 20120920

Docket: A-210-11

Citation: 2012 FCA 243

**CORAM: NADON J.A.
DAWSON J.A.
STRATAS J.A.**

BETWEEN:

PATRICK E. NICHOLLS

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Toronto, Ontario, on September 20, 2012.

Judgment delivered from the Bench at Toronto, Ontario, on September 20, 2012.

REASONS FOR JUDGMENT OF THE COURT BY:

DAWSON J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario on September 20, 2012)

DAWSON J.A.

[1] On June 21, 2010, the appellant, Mr. Nicholls, filed a notice of appeal in the Tax Court of Canada (Tax Court) in respect of his income tax assessments for the 1990 to 1995 taxation years. The notice of appeal was treated by the Tax Court as an application to extend the time to file an appeal. The record before this Court does not show that the appellant made any objection to this characterization.

[2] A judge of the Tax Court dismissed the application to extend time (2011 DTC 1063). No appeal was taken from this decision, which was a "final judgment" of the Tax Court as that term is defined in subsection 2(1) of the *Federal Courts Act* (see *Reebok Canada v. Canada (Deputy Minister of National Revenue, Customs and Excise – M.N.R.)* (1995), 179 N.R. 300, [1995] F.C.J. No. 220).

[3] Instead, the appellant moved for reconsideration of the decision to refuse the extension of time. A second judge of the Tax Court (Judge) dismissed the motion for reconsideration (2011 TCC 272, 2011 DTC 1207). This is an appeal from the order dismissing the motion for reconsideration.

[4] The Judge began his analysis by correctly noting that on a motion for reconsideration the party seeking to set aside a previous order must establish one of two criteria. The first criterion is that the order did not accord with the reasons given in support of the order. The second criterion is that some matter that should have been dealt with in the order was overlooked or accidentally omitted. The Judge went on to find that the appellant had failed to demonstrate the existence of either criterion. The Judge concluded by expressing his view that the appellant was "wasting the time of the Court and wasting the time of the Respondent." On this basis the Judge awarded costs against the appellant, fixed in the amount of \$1,000 payable forthwith.

[5] In our view, the appellant has neither argued nor demonstrated any palpable and overriding error in the Judge's application of the legal test for reconsideration to the facts.

[6] The appellant argues that the Judge overlooked Rule 4(1) of the *Tax Court of Canada Rules (General Procedure)*, which requires the rules to be liberally construed to secure the just, most expeditious and least expensive determination of every proceeding on its merits. However, Rule 4(1) is a rule of interpretation which does not create any substantive rights. Accordingly, the Judge did not err by failing to refer to Rule 4(1).

[7] The appellant also argues in his written submissions that the Judge denied him procedural fairness by excessively intervening in the questioning. Questions of procedural fairness are reviewed by this Court on the correctness standard of review. That said, the transcript of proceedings before the Judge does not support the appellant's assertion. In no way can the Judge be said to have interfered with the appellant's effective presentation of his case.

[8] Finally, the appellant argues in his written submissions that the Judge erred in his award of costs. Cost awards are discretionary, and this Court can only interfere with such an award if the Judge failed to give weight to all relevant considerations, considered irrelevant factors or erred in law (see *Merck & Co. v. Apotex Inc.*, 2006 FCA 324, 354 N.R. 355 at paragraphs 3 and 4). We are all of the view that the appellant has not demonstrated any such error.

[9] For these reasons, the appeal will be dismissed with costs.

"Eleanor R. Dawson"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-210-11

**AN APPEAL FROM A DECISION OF THE HONOURABLE JUSTICE LITTLE OF THE
TAX COURT OF CANADA, DATED MAY 19, 2011**

STYLE OF CAUSE: PATRICK E. NICHOLLS V HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: September 20, 2012

REASONS FOR JUDGMENT OF THE COURT BY: Nadon, Dawson & Stratas JJ.A.

DELIVERED FROM THE BENCH BY: Dawson J.A.

APPEARANCES:

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FOR THE APPELLANT
(Self-represented)

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FOR THE RESPONDENT

SOLICITORS OF RECORD:

N/A

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