

Federal Court of Appeal



Cour d'appel fédérale

Date: 20190527

Docket: A-249-17

Citation: 2019 FCA 164

**CORAM: DAWSON J.A.
WOODS J.A.
LASKIN J.A.**

BETWEEN:

CHRISTOPHER J. PIKE

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at St. John's, Newfoundland and Labrador, on May 27, 2019.

Judgment delivered from the Bench at St. John's, Newfoundland and Labrador, on
May 27, 2019.

REASONS FOR JUDGMENT OF THE COURT BY:

DAWSON J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at St. John's, Newfoundland and Labrador, on May 27, 2019).

DAWSON J.A.

[1] On October 28, 2013, the appellant filed a notice of appeal in the Tax Court of Canada with respect to his income tax liability for the 2000, 2001, 2002 and 2003 taxation years.

Thereafter, the appeal did not proceed with dispatch.

[2] A show cause hearing was held on June 5, 2017. Counsel for the appellant did not attend the hearing. Following the hearing, on June 12, 2017, an order issued which ordered: the appellant to pay costs in the amount of \$500 to the respondent and to provide answers to the respondent's demand for particulars by June 23, 2017; the respondent to inform the Court and the appellant if the particulars were unsatisfactory by June 30, 2017; the appellant to file an amended notice of appeal that incorporated the answers given to the demand for particulars by July 14, 2017; the respondent to file an amended reply by August 18, 2017; and that, should the appellant not comply, the appeal would be automatically dismissed with costs and without further notice or formality.

[3] No appeal was taken from this order.

[4] Subsequently, the appeal was dismissed with costs by order dated August 22, 2017. This order recited that the respondent had requested that the appeal be dismissed on the grounds that the amended notice of appeal was filed late and also did not incorporate the answers given to the demand for particulars.

[5] This is an appeal from the August 22, 2017 order dismissing the appeal. The order was issued in Court File 2013-4088(IT)G.

[6] On this appeal the appellant raises a number of issues which we would restate as:

- i. Did the Tax Court err in proceeding on June 5, 2017, and in issuing the June 12, 2017 order without the appellant's counsel being given an opportunity to respond?

- ii. Did the Tax Court err in dismissing the appellant's amended notice of appeal on the basis that it was late and did not incorporate the answers given to the respondent's demand for particulars as required by the June 12, 2017 order?
- iii. The respondent filed a reply to the amended notice of appeal. Did this cure any deficiencies in the amended notice of appeal so that the Tax Court erred by dismissing the appeal?
- iv. Was the appellant improperly denied the opportunity to make submissions to the Tax Court before his appeal was dismissed?

[7] We see no merit in any of the issues raised by the appellant. We reach this conclusion for the following reasons.

[8] First, the only order under appeal is the August 22, 2017 order dismissing the appeal. Any concerns flowing from the June 5, 2017 show cause hearing or the June 12, 2017 order are not relevant to the August 22, 2017 order. Any such concerns ought to have been raised by way of an appeal of the June 12, 2017 order.

[9] Second, the amended notice of appeal was filed on July 18, 2017. The June 12, 2017 order required it to be filed by July 14, 2017 so that the pleading was filed late. The particulars sought and given related to the legislative requirements needed to support allowable business investment losses. Those requirements are missing from the amended notice of appeal.

Therefore, the pleading does not comply with the June 12, 2017 order.

[10] Next, while the respondent did file a reply to the amended notice of appeal, it did so with a letter explaining that the reply was filed only to comply with the June 12, 2017 order and that the respondent did not retract from the position that the appeal should be dismissed.

[11] Finally, as previously stated, no appeal was taken from the June 12, 2017 order which stated that failure to comply with that order would result in the appeal being dismissed with costs. The appellant could have made submissions had he attended the show cause hearing or appealed the June 12, 2017 order.

[12] We acknowledge that the dismissal of an appeal on procedural grounds is a severe remedy. However, we see no palpable and overriding error of fact or mixed fact and law, and no error of law by the Tax Court. The Tax Court gave the appellant the opportunity to comply with its orders and warned of the consequences if the appellant failed to comply.

[13] 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-249-17

STYLE OF CAUSE: CHRISTOPHER J. PIKE v.
HER MAJESTY THE QUEEN

PLACE OF HEARING: ST. JOHN'S, NEWFOUNDLAND
AND LABRADOR

DATE OF HEARING: MAY 27, 2019

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LASKIN J.A.

DELIVERED FROM THE BENCH BY: DAWSON J.A.

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