

Federal Court of Appeal



Cour d'appel fédérale

Date: 20140401

Docket: 14-A-14

Citation: 2014 FCA 87

Present: STRATAS J.A.

BETWEEN:

MURAD DORAY

Applicant

and

HER MAJESTY THE QUEEN

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on April 1, 2014.

REASONS FOR ORDER BY:

STRATAS J.A.

Federal Court of Appeal



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REASONS FOR ORDER

STRATAS J.A.

[1] The applicant moves for an order extending the time to appeal a judgment of the Tax Court.

[2] The applicant must demonstrate a continuing intention to appeal, an arguable case for appeal, and a reasonable explanation for the whole period of delay. Also relevant is whether the respondent is prejudiced by the delay. See *Grewal v. Canada (Minister of Employment and Immigration)*, [1985] 2 F.C. 263 (C.A.). Citing *Kaur v. Canada*, 2011 FCA 292 at paragraph 2, the respondent suggests that the excessiveness of the delay is also relevant. That is true, but only in the

sense that a long delay must be fully explained. It is conceivable that extensions of time can be granted despite a very long delay where, among other things, the explanations are adequate: *Canada (Attorney General) v. Larkman*, 2012 FCA 204.

[3] These factors are to be assessed with a view to determining whether, overall, it is in the interests of justice that an extension of time be granted: *Larkman, supra*.

[4] To determine whether the applicant has met the legal standard permitting an extension of time, it is first necessary to review what happened when.

[5] The Tax Court rendered its judgment orally on October 3, 2013. The applicant received the certified true copy of the judgment on October 8, 2013.

[6] Within the 30 day deadline, the applicant reviewed the Tax Court's website for guidance on how to appeal. On October 24, 2013, the applicant completed a Tax Court notice of appeal form and sent it to the Tax Court. This shows an intention to appeal the Tax Court's judgment within the 30 day period, albeit an intention that was not effective.

[7] After the expiry of the 30 day deadline, on November 12, 2013 and November 19, 2013, counsel for the respondent advised the applicant by email that he needed to direct his queries to this Court. It is evident from the email correspondence that, through no fault of his own, the applicant was not knowledgeable about how to appeal the Tax Court's judgment.

[8] On December 22, 2013, the Tax Court advised the applicant that he needed to appeal to this Court, not the Tax Court. On January 3, 2014, the Registry of this Court advised the applicant that if he were to appeal to this Court, he would need to seek an extension of time. On January 10, 2014, rather than attending to that quickly, the applicant wrote the Registry of this Court, explaining that he had previously followed “all pertinent directions,” but also signalled a willingness to comply with the procedures of the Court. A week later, on January 17, 2014, the Registry of this Court wrote the applicant and outlined the procedure for both an appeal and for a motion seeking an extension of time.

[9] To this point, on a generous interpretation of the events, the applicant’s delay might be explained by lack of knowledge and confusion. It is a generous interpretation because as early as mid-November the applicant was on notice that there were irregularities that needed to be addressed, yet the applicant did very little, if anything, to address them.

[10] But even on that generous interpretation of events, there is an unexplained 57 day delay leading up to this motion for an extension of time. As of January 17, 2014, the applicant had all the information necessary to present a proper notice of appeal to this Court along with a motion for an extension of time. Yet, 57 days – almost two times the normal 30 day time period for launching an appeal – went by before the applicant moved for an extension of time. This delay is unexplained.

[11] In addition, the applicant has not provided the notice of appeal that will be filed if this Court grants the extension of time. The motion materials contain a Tax Court document entitled “notice of appeal,” but that document does not comply with Rule 337.1 of the *Federal Courts Rules*, is not in

Form 337.1, nor does it set out any of the limited grounds of appeal to this Court permitted by subsection 27(1.3) of the *Federal Courts Act*, R.S.C. 1985, c. F-7. Quite simply, it is not clear that the document entitled “notice of appeal” raises matters within this Court’s purview. Accordingly, I am not satisfied from the material before me that there is an arguable case on appeal.

[12] The respondent, among other things, notes that the style of cause in this motion is incorrect, naming as it does the counsel for the respondent. I agree. The proper respondent is Her Majesty the Queen. Therefore, the style of cause in this motion shall be amended to reflect this.

[13] For the foregoing reasons, I shall dismiss the motion. Appropriately, the respondent does not seek costs and so none shall be awarded.

"David Stratas"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: 14-A-14

STYLE OF CAUSE: MURAD DORAY v. HER
MAJESTY THE QUEEN

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: STRATAS J.A.

DATED: APRIL 1, 2014

WRITTEN REPRESENTATIONS BY:

Murad Doray ON HIS OWN BEHALF

Lindsay Beelen FOR THE RESPONDENT

SOLICITORS OF RECORD:

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of Canada