

BETWEEN:

BERTRAND JOYAL,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Application heard on January 26, 2007, at Montréal, Quebec

Before: The Honourable Justice François Angers

Appearances:

Counsel for the Applicant:

Gilles Doré

Counsel for the Respondent:

Philippe Dupuis

ORDER

Whereas the application by the Applicant under section 167 of the *Income Tax Act* (the “Act”) for an order extending the time within which an appeal may be instituted under the Act.

The application is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 21st day of March 2007.

“François Angers”

Angers J.

Citation: 2007TCC156
Date: 20070321
Docket: 2006-3390(IT)APP

BETWEEN:

BERTRAND JOYAL,

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and

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REASONS FOR ORDER

Angers J.

[1] This is an application by the Applicant for an order extending the time within which an appeal may be instituted to the Tax Court of Canada from the reassessments dated March 17, 2006, for the 1998, 1999, 2000, 2001 and 2002 taxation years, under section 167 of the *Income Tax Act* (the “Act”). To make an order extending the time for appealing, it is necessary, according to subsection 167(5), that the following conditions be met:

167(5) . . .

(a) the application is made within one year after the expiration of the time limited by section 169 for appealing; and

(b) the taxpayer demonstrates that

(i) within the time otherwise limited by section 169 for appealing the taxpayer

(A) was unable to act or to instruct another to act in the taxpayer’s name, or

(B) had a *bona fide* intention to appeal,

(ii) given the reasons set out in the application and the circumstances of the case, it would be just and equitable to grant the application,

(iii) the application was made as soon as circumstances permitted, and

(iv) there are reasonable grounds for the appeal.

[2] The Applicant duly objected to the reassessments on May 11, 2004, and, by letter sent by registered mail dated January 4, 2006, the Minister of National Revenue (the “Minister”) advised the Applicant that he had confirmed the reassessments of March 17, 2004. The letter informed the Applicant of his right to appeal to the Court and included the document explaining how to proceed. That same day, the Minister also wrote to the Applicant’s legal representative, Gilles Doré, informing him of the same facts and also attached the copy of the document containing the information on how to appeal to the Court.

[3] The Applicant did not testify at the hearing. An affidavit by Mr. Doré was filed explaining the circumstances surrounding the failure to institute an appeal within the prescribed time limit, which ended on April 4, 2006.

[4] According to the affidavit, the Applicant was contacted by a collection officer about his unpaid taxes on November 15, 2006. He informed the officer that he had appealed the assessment and contacted Mr. Doré to make sure that everything was in order, which was not the case. The appropriate steps were taken and accordingly, the instant application was filed two days later, on November 17, 2006.

[5] The other facts revealed by the affidavit are as follows:

1. The Applicant, who works in the agricultural field, always entrusted the task of filing his annual returns to professionals.
2. On March 21, 2001, the Applicant was arrested following a police operation.
3. On the occasion of said police operation, numerous searches and seizures were conducted and countless goods and documents were seized or dealt with.

4. On October 12, 2001, the Applicant pled guilty and was sentenced to six years in prison.
5. During his detention, he was served with many notices of assessment.
6. The Applicant retained the services of Mr. Doré, who agreed to represent him.
7. Mr. Doré therefore contacted or attempted to contact all those who acted in the cases during the relevant years. Three cases (Goods and Services Tax, Québec Sales Tax and provincial income tax) are on appeal.
8. With respect to the instant case, it was plagued with the pussyfooting between various stakeholders more or less certain of their determination to act in these cases and, as a result, related documents were now misplaced, now found, now sent in whole and now sent in part.
9. What is more, there was a misunderstanding between the stakeholders as to the person authorized by the warrant.
10. Mr. Doré did not manage to clarify the situation and take the appropriate measures in a timely manner, which explains the need for the instant application.
11. The Applicant stated that it was always his intention to appeal.

[6] Revenue Canada appeals officer Francine Thériault testified that she received the Applicant's file in June 2005 during the objection period. The file included a fax from Mr. Doré stating that he was the representative for the Applicant and a note saying that Sophie Doré, Mr. Doré's assistant, would transmit the grounds of the objection as soon as an officer telephoned her.

[7] On July 6, 2005, Ms. Thériault asked Mr. Doré for a signed authorization from the Applicant certifying that he was his representative, as the notice of objection identified the Applicant's accountant as his representative. She also asked him to provide her with submissions on the objection. After a few telephone exchanges during that month, a letter was sent by priority post to Mr. Doré still requesting the signed authorization from the taxpayer and the grounds for the

objection. A second request was sent by priority post in September 2005 and, following a telephone call, Mr. Doré informed Ms. Thériault that the information would be sent to her within a week. Seeing as the Applicant was in prison, additional extensions were granted by Ms. Thériault as he was to be released in October. Mr. Doré was granted an additional extension until December 15, 2005, after which the file would be closed. On December 20, 2005, the file was closed; notices of confirmation were therefore sent on January 4, 2006, to the Applicant and Mr. Doré as mentioned above.

[8] On June 8, 2006, Sophie Doré left a message for Ms. Thériault asking her to telephone her back. The telephone number she left was that of Mr. Doré. Seeing as Ms. Thériault was away from the office, she returned the telephone call on August 15, 2006, and explained to her that the file had been closed since December 2005 and that she had 90 days to institute an appeal to the Court. Sophie Doré stated at the time that she did not file an appeal with the Court before April because she did not have the file. A message was left for Ms. Thériault on November 16, 2006, by Sophie Doré requesting a copy of the memorandum on the Applicant's objection and that document was faxed on November 21, 2006.

[9] Did the Applicant succeed in meeting the conditions set out in subsection 167(5) of the Act? The affidavit of Mr. Doré convinces me that the Applicant had a bona fide intention to appeal, as Mr. Doré admits having been instructed by the Applicant to do so and I have no reason to doubt the veracity of that instruction. As for the condition in paragraph 167(5)(B)(iv), it was not raised in the Respondent's objection to the instant application. The issue is therefore whether it would be just and equitable to make such an order and whether the application was made as soon as circumstances permitted within the meaning of paragraphs 167(5)(B)(ii) and (iii) of the Act.

[10] In the case at bar, the notices of confirmation dated January 4, 2006, were sent to the Applicant and Mr. Doré accompanied by the information on the appeal process, and particularly the 90 day time limit from the day the Minister's decision has been mailed. On two occasions, the name of Sophie Doré appears in the handwritten notes of Ms. Thériault and in one place, it is indicated that she would act as an assistant. In the telephone conversation of August 15, 2006, she mentioned that she did not file an appeal with the Court before April (date of the expiration of the 90 day time limit) because she did not have the file. It was not until November, three months later, that she telephoned Ms. Thériault back and asked her for a copy of the memorandum on the objection after the Applicant was paid a visit by Canada Revenue Agency collection officers.

[11] The onus is therefore on the taxpayer (the Applicant) to prove, on balance of probabilities, that his application was made as soon as circumstances permitted. He must also be aware of the delay in instituting an appeal. In the case at bar, he entrusted this responsibility to his lawyer and according to the evidence, he was or should have been aware of the delay when Sophie Doré acknowledged that delay during her conversation with Ms. Thériault. In my opinion, there was, as of that moment, an obligation, on the one hand, to inform the Applicant and, on the other, to make an application for an extension of time. According to the evidence, the application was not made until mid-November 2006. No evidence was adduced to explain the interval between August 15, 2001, and the instant application.

[12] In view of these circumstances, I cannot grant the application. It is therefore dismissed.

Signed at Ottawa, Canada, this 21st day of March 2007.

“François Angers”

Angers J.

Translation certified true

on this 5th day of July 2007.

Daniela Possamai, Translator

CITATION: 2007TCC156

COURT FILE NO.: 2006-3390(IT)APP

STYLE OF CAUSE: Bertrand Joyal and The Queen

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: January 26, 2007

REASONS FOR ORDER BY: The Honourable Justice
François Angers

DATE OF ORDER: March 21, 2007

APPEARANCES:

Counsel for the Applicant: Gilles Doré

Counsel for the Respondent: Philippe Dupuis

COUNSEL OF RECORD:

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