Docket: 2003-3722(IT)I

BETWEEN:

JOSEPH KATZENBACK,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

---

Appellant's Motion for an Adjournment of the Appeal heard
and dismissed from the Bench on
November 6, 2007 at Edmonton, Alberta

Before: The Honourable Justice J.E. Hershfield

Appearances:

| | |
|---|---|
| Counsel for the Appellant: | The Appellant himself |
| Counsel for the Respondent: | Gregory Perlinski |

---

**ORDER**

Upon the Appellant having brought a motion for the adjournment of the appeal;

And upon hearing the parties and having read the materials filed;

IT IS ORDERED that the Appellant's motion is dismissed in accordance with and for the reasons set out in the attached Reasons for Order.

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

"J.E. Hershfield"

Hershfield J.

Citation: 2007TCC693
Date: 20071121
Docket: 2003-3722(IT)I

TAX COURT OF CANADA

Court Number 2003-3722(IT)I

BETWEEN:

JOSEPH KATZENBACK

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

REASONS FOR ORDER DENYING ADJOURNMENT REQUEST
DELIVERED ORALLY FROM THE BENCH
ON NOVEMBER 6, 2007 AT EDMONTON, ALBERTA
(Edited from the transcript of Reasons for Order)

TAKEN BEFORE:
The Honourable Mr. Justice Hershfield

---

J. Katzenback — Appeared On His Own Behalf

G. F. Perlinski, Esq. — Appeared for the Respondent

---

JUSTICE HERSHFIELD: Good afternoon. I hope we're ready to proceed. But before we do that, I wanted to read for the record reasons for denying the adjournment request. It will be brief. You can both have a seat while I do that.

The adjournment request has been denied. It is the fourth request, made this time five days before the matter was scheduled to be heard.[1]

The Order for the appeal to be heard today was made on April 13th, 2007, by Justice Woods, who heard the third request for an adjournment on the day that the hearing was set down for hearing of the appeal itself.

In allowing the third adjournment, Justice Woods considered that the Appellant had no documents to support his appeal, but did not grant the adjournment on that basis. She concluded that even though such documents were asserted to be in the possession of a third person, she found that a further adjournment would not assist the Appellant in obtaining the documents.

---

[1] The first hearing was scheduled for April 23, 2004. On the 22nd, one day prior to the scheduled hearing date the Appellant requested an adjournment. The application requested a date after November 2004. The request was granted. The appeal was again set down to be heard on April 29th, 2005. On April 19th the appellant requested an adjournment until November 2005 or later pending criminal charges against him and restraining orders being dealt with so as to enable him to contact his former wife in order to resolve the tax matters in dispute. The adjournment request was allowed. It was next scheduled to be heard April 13, 2007. On the 8th of that month the Appellant requested a further adjournment stating that he believed, in time, supporting documents would “re-appear”, that he was not in a better position to produce documents than the last time the matter was adjourned, that he was still not permitted to contact his former wife. That was the third adjournment request.

This conclusion, that she would not allow the adjournment on the basis that a third person had possession of helpful documents, was given after listening for some time to substantially the same story that I heard today concerning the Appellant's former wife. She prepared the returns; he didn't know where the records were; and, it wasn't until after they were separated that these assessments came along. He asserts that she would have knowledge of the circumstances since she was a Revenue Canada employee and she prepared the returns and the best evidence that he could give was evidence through her.

But because of acrimony between the two of them, there were restraining Orders barring him from contacting her, including restraining Orders against him seeing his children as well as his ex-wife, and now there are criminal charges pending against him for criminal harassment of his family or of his wife.

It was perhaps on this basis that one of the prior requests for an adjournment had been made – that is, these matters made it impossible for him to bring his wife forward, and he wanted these matters to be dealt with first before the tax matter was resolved.

Nonetheless, Justice Woods, having heard the story as I heard it again today, concluded that an adjournment on that basis could not be allowed because she was not satisfied that time would

assist the Appellant in obtaining the documents. Helpful testimony from his ex-wife where circumstances had eroded to the point where they have eroded seems unlikely to me as well.

Still, Justice Woods granted the adjournment on the basis that a self-represented litigant would have not understood what was necessary for him to succeed in his appeal without the documentary evidence.

So the purpose of the adjournment was to give the Appellant time to prepare to proceed without the documents he hoped one day might re-appear. It was to give the Appellant time to prepare detailed oral evidence in respect of documents asserted to be with his ex-wife.

It is relevant to note as well that there was a discussion at the hearing before Justice Woods of the previous adjourned hearing set for April 29, 2005 and whether it had been set down peremptorily. That discussion, I believe, should have been sufficient for the Appellant to have understood what it meant when Justice Woods concluded, based on some discussion with counsel for the Respondent, that the hearing before her was not peremptorily set but that if it had been she would not have felt at liberty to adjourn.

As well she told the Appellant that the hearing that she set for today, the fourth time it was being down, was being set peremptorily and

explained that that meant no further postponements without very good reasons. Justice Woods made the Order from the bench and signed it the same day for this hearing today to be on a peremptory basis after discussing dates with the parties. The Appellant then should have known this hearing could not be adjourned without fresh good reasons.

The Appellant then should have reviewed the matters at issue and put his mind to what parol or other evidence he would have to give to respond to the issues.

The Appellant does not appear to have done this. He came to Court saying he was surprised to hear that there were more issues to be dealt with than he thought, yet all the issues to be addressed should have been known to him. The reply to the Notice of Appeal sets out these issues in sufficient detail.

I would like to back-up here in order to acknowledge another option contemplated while hearing the request for an adjournment. In arguing for the adjournment, the Appellant noted that there were these outstanding criminal charges against him for harassing his former wife. He referred again to an application lifting the restraining Order against him in respect of at least his children.

He noted again that his ex-wife would be the person who would have supporting evidence and that she was the person who prepared the returns for the

years in question, all of which were prior to the divorce, hostilities, and separation, and that she was an employee of Revenue Canada.

Justice Woods, having heard the same story, did not regard that as sufficient reason to adjourn these proceedings. The reason she gave for adjourning was simply to allow time to better prepare oral evidence.

While I am somewhat satisfied that the Appellant is no better prepared today than he might have been at the time he appeared before Justice Woods, that is no reason to allow a further adjournment.

I did suggest during argument, however, that a subpoena might be considered. That is I enquired that if there was value to a subpoena being issued at the request of the Appellant by the Court that the Appellant's former wife be compelled to appear, then I might consider the possibility of an adjournment.

The Appellant's first response to that was that there was concern that such a subpoena would further serve the interests of his wife in the criminal harassment case or in his application to have the restraining Order lifted.

On that basis I recessed the hearing of the motion to allow the parties to contact the Appellant's criminal lawyer so that we could have his

thoughts on such a subpoena known. The Appellant's lawyer was not available, but another lawyer in the office spoke to Respondent's counsel with the Appellant's consent and advised not only that a subpoena now could be prejudicial, but that even if she testified, there could be a problem in the Appellant examining or cross-examining his ex-wife given that in provincial hearings, an *amicus curiae* was appointed or being appointed so that no direct exchanges would take place between the Appellant and his ex-wife.

The suggestion perhaps was that the exchange in Tax Court between the Appellant and his ex-wife in either an examination in chief, if she was a witness being called by the Appellant, or in a cross-examination by the Appellant, should the application or subpoena request be made by the Crown, would be impossible.

As well, there appears to be a strong likelihood in my view and as admitted by the Appellant that he would never call or subpoena his ex-wife even after the criminal proceedings and other related proceedings have been finally disposed of and on that basis I did not pursue this further and denied the adjournment request.

It is also important to note that in denying the motion, I was and am of the belief that the adjournment history of this matter simply does not warrant further delays. I am of the view that on the

balance of probability, the ability of the Appellant to prosecute his appeal will not improve as years go by. I agree with Justice Woods on this point.

As well I note that the second request for an adjournment in April 2005 noted the criminal charges pending and that the Appellant wanted to wait until they were dealt with. It was two years before the next hearing was set down before Justice Woods and now almost 7 months after that, there are still criminal matters. Nothing is moving forward. In addition, adjournment requests refer to temporary work and the Appellant not being available. Even setting dates with Justice Woods was a problem. In any event, adjournments were allowed and now considering the history of this matter and basis for Justice Woods' adjournment and these other reasons I have denied the adjournment request.

The adjournments requested by the Appellant have been sufficiently indulged by this Court. It is time to move forward and hear the evidence as best it can be brought forward today.

As I've said, it is highly unlikely, almost wholly improbable to me that the Appellant will at any time in the future be capable of bringing better evidence.

The Appellant has an obligation to prosecute his appeal on an expeditious basis. It is accordingly time to proceed.

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

"J.E. Hershfield"
Hershfield J.

CITATION: 2007TCC693

COURT FILE NO.: 2003-3722(IT)I

| | |
|---|---|
| STYLE OF CAUSE: | Joseph Katzenback and Her Majesty the Queen |
| PLACE OF HEARING: | Edmonton, Alberta |
| DATE OF HEARING: | November 6, 2007 |
| REASONS FOR ORDER BY: | The Honourable Justice J.E. Hershfield |
| DATE OF ORAL REASONS FOR ORDER: | November 6, 2007 |

APPEARANCES:

| | |
|---|---|
| For the Appellant: | The Appellant himself |
| Counsel for the Respondent: | Gregory Perlinski |

COUNSEL OF RECORD:

| | |
|---|---|
| For the Appellant: | |
| Name: | |
| Firm: | |
| For the Respondent: | John H. Sims, Q.C.<br>Deputy Attorney General of Canada<br>Ottawa, Canada |