

Docket: 2003-3213(IT)APP

BETWEEN:

SYLVIE DESCHAMPS,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Application heard on common evidence with the applications of **Guy Deschamps**
(2003-3214(IT)APP) and **Richard Deschamps (2003-3212(IT)APP)**
on December 10, 2003, at Montréal, Quebec

Before: The Honourable Justice Louise Lamarre Proulx

Appearances:

Counsel for the Applicant: Daniel Charpentier

Agent for the Respondent: Agathe Cavanagh (Law student)

ORDER

Considering the application to obtain an order extending the time in which to institute appeals of assessments under the *Income Tax Act* for the 1992 and 1993 taxation years;

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

Signed at Ottawa, Canada, this 4th day of March 2004.

“Louise Lamarre Proulx”

Lamarre Proulx J.

Translation certified true
on this 23rd day of December 2004 .

Julie Oliveira, Translator

Docket: 2003-3214(IT)APP

BETWEEN:

GUY DESCHAMPS,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Application heard on common evidence with the applications of **Sylvie Deschamps (2003-3213(IT)APP)** and **Richard Deschamps (2003-3212(IT)APP)** on December 10, 2003, at Montréal, Quebec

Before: The Honourable Justice Louise Lamarre Proulx

Appearances:

Counsel for the Applicant: Daniel Charpentier

Agent for the Respondent: Agathe Cavanagh (Law student)

ORDER

Considering the application made to obtain an order extending the time in which to institute appeals of assessments made under the *Income Tax Act* for the 1992 and 1993 taxation years;

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

Signed at Ottawa, Canada, this 4th day of March 2004.

“Louise Lamarre Proulx”

Lamarre Proulx J.

Translation certified true
on this 23rd day of December 2004 .

Julie Oliveira, Translator

Docket: 2003-3212(IT)APP

BETWEEN:

RICHARD DESCHAMPS,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Application heard on common evidence with the applications of **Sylvie Deschamps (2003-3213(IT)APP)** and **Guy Deschamps (2003-3214(IT)APP)**
on December 10, 2003, at Montréal, Quebec

Before: The Honourable Justice Louise Lamarre Proulx

Appearances:

Counsel for the Applicant: Daniel Charpentier

Agent for the Respondent: Agathe Cavanagh (Law student)

ORDER

Given the application made to obtain an order extending the time in which to institute appeals of assessments made under the *Income Tax Act* for the 1991, 1992 and 1993 taxation years;

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

Signed at Ottawa, Canada, this 4th day of March 2004.

“Louise Lamarre Proulx”

Lamarre Proulx J.

Translation certified true
on this 23rd day of December 2004 .

Julie Oliveira, Translator

Citation: 2004TCC198

Date : 20040304

Docket: 2003-3213(IT)APP

2003-3214(IT)APP

2003-3212(IT)APP

BETWEEN:

SYLVIE DESCHAMPS,
GUY DESCHAMPS,
RICHARD DESCHAMPS,

Applicants,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR ORDER

Lamarre Proulx J.

[1] These applications were heard on common evidence and are applications to extend the time limit in which the Applicants can appeal to the Tax Court of Canada under section 167 of the *Income Tax Act* (the “Act”).

[2] The reassessments are dated November 14, 1995, for the 1992 and 1993 taxation years in Guy Deschamps’ case. For Sylvie Deschamps, the reassessments are dated November 6, 1995, for the 1992 and 1993 taxation years. For Richard Deschamps, the reassessments are dated February 26, 1996, for the 1991, 1992 and 1993 taxation years.

[3] The confirmations are dated August 20, 2002. It is agreed that if the taxpayers were legitimately informed in writing of the decision of the Minister of National Revenue (the “Minister”), the time allowed for an appeal to this Court under section 169 of the Act expired on November 18, 2002. The time limit for

appeals is 90 days from the day notice has been mailed to the taxpayer that the Minister has confirmed the assessment.

[4] The applications for an extension of time under section 167 of the Act are dated September 8, 2003.

[5] Richard Deschamps was the only Applicant to testify. First, he said that the notices of objection were filed within the prescribed time limit. Then, he explained that after receiving a request for payment, he consulted his lawyer. This request was produced as Exhibit R-2 it is dated July 9, 2003, is from Revenu Québec and the subject heading indicates that it is a final notice.

[6] The Applicant's testimony was brief and affirmed that he and the other Applicants believed that they were still waiting for Revenue Canada's decision. Based on Exhibit R-1, the cases were put on hold in 1996 by Revenue Canada pending this Court's decision in a similar case. The taxpayers accepted this hold placed on their objection. According to the Applicant, they allegedly did not receive the confirmation notices.

[7] Suzanne Lepage, an appeals officer, testified. She produced letters from March 19, 2002, as Exhibit I-3, which were addressed to the Applicants' counsel and to the Applicant, Guy Deschamps. These letters included a proposed agreement between the taxpayers and the federal tax authorities to settle the appeals that had been put on hold.

[8] She contacted the parties on several occasions. On July 23, 2002, Mr. Charpentier, the Applicants' counsel, told her that he recommended that the clients sign. As she still had not received anything by August 7, 2002, she again contacted counsel and the taxpayers to find out what was going on. She was told that the taxpayers had changed their minds and refused the agreement.

[9] It was following this negative information that she sent the confirmation notices of the reassessments with an explanatory letter by registered mail on August 20, 2002. These documents were filed as Exhibit I-1. Exhibit I-2 is the confirmation of the delivery of these documents by registered mail and of their receipt. Exhibit I-1 also shows that there was a delivery by regular mail of at least one of these documents to the Applicants' counsel.

[10] Exhibit I-4 consists of computer printouts with the taxpayers' addresses. The three taxpayers live in the same city, each at different street addresses, which have remained the same for the past 10 years.

[11] The Respondent's agent pointed out that the Applicants did not show any indication that they acted as soon as circumstances permitted as stipulated in subsection 167(5) of the Act. She also pointed out that all that is stipulated in the Act is to inform the taxpayer in writing. Evidence of receipt is not required.

[12] She referred to the Federal Court of Appeal decision in *Canada (Attorney General) v. Bowen* (C.A.), [1992] 1 F.C. 311, and more specifically paragraph 7 of this decision:

7. In our opinion, the duty resting upon the Minister under subsection 165(3) was to do precisely what he did, viz., notify the respondent of the confirmation by registered mail. Nothing in that subsection or in section 169 required the notification to be "served" personally or to be received by the taxpayer. In dispatching the notification by registered mail the Minister was entitled to avail himself of the address or addresses which the respondent himself had already furnished. There was no obligation on him to look beyond that information. Moreover, a requirement for the receipt of the notification would be difficult if not totally unworkable from an administrative standpoint. Parliament has not required it; it has required merely that the notification be dispatched by registered mail.

[13] The Applicants' counsel pointed out that neither they nor he received the confirmation notice.

Analysis and conclusion

[14] The Federal Court of Appeal decision was rendered concerning the previous version of subsection 165(3) of the Act. This subsection was amended on June 10, 1993, and read as follows:

165(3) **Duties of the Minister** — On receipt of a notice of objection under this section, the Minister shall,

- (a) with all due dispatch, reconsider the assessment and vacate, confirm or vary the assessment or reassess or

(b) where the taxpayer indicates in the notice of objection that the taxpayer wishes to appeal immediately to the Tax Court of Canada and waives reconsideration of the assessment and the Minister consents, file a copy of the notice of objection with the Registrar of that Court,

and the Minister shall thereupon notify the taxpayer by registered mail of the action taken.

[15] Subsection 165(3) of the Act now reads as follows:

165(3) **Duties of Minister** — On receipt of a notice of objection under this section, the Minister shall, with all due dispatch, reconsider the assessment and vacate, confirm or vary the assessment or reassess, and shall thereupon notify the taxpayer in writing of the Minister's action.

[16] Upon reading these provisions, it is clear that the amendment did not change the principles set out by the Federal Court of Appeal in *Bowen (supra)*.

[17] Subsections 169(1), 167(1), 167(5) and 244(14) of the Act read as follows:

167(1) **Extension of time to appeal** — Where an appeal to the Tax Court of Canada has not been instituted by a taxpayer under section 169 within the time limited by that section for doing so, the taxpayer may make an application to the Court for an order extending the time within which the appeal may be instituted and the Court may make an order extending the time for appealing and may impose such terms as it deems just.

167(5) **When order to be made** — No order shall be made under this section unless:

- (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,
 - (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.

169(1) **Appeal** — Where a taxpayer has served notice of objection to an assessment under section 165, the taxpayer may appeal to the Tax Court of Canada to have the assessment vacated or varied after either:

- (a) the Minister has confirmed the assessment or reassessed, or;
- (b) 90 days have elapsed after service of the notice of objection and the Minister has not notified the taxpayer that the Minister has vacated or confirmed the assessment or reassessed,

but no appeal under this section may be instituted after the expiration of 90 days from the day notice has been mailed to the taxpayer under section 165 that the Minister has confirmed the assessment or reassessed.

244(14) **Mailing date** — For the purposes of this Act, where any notice or notification described in subsection 149.1(6.3), 152(3.1), 165(3) or 166.1(5) or any notice of assessment or determination is mailed, it shall be presumed to be mailed on the date of that notice or notification.

[18] I believe that the evidence revealed that the confirmation notices were sent in writing on August 20, 2002, by registered mail as reported in Exhibit I-2.

[19] Exhibit I-2 also shows that the documents were received. In any case, it is not very plausible that three notices sent to different addresses where the addressees have been residing for a long time were not received. It is also strange that the Applicants only responded after receiving the final notice requesting payment.

[20] When taxpayers can clearly demonstrate that they have not received mail items because they have moved or if for some reason they were not residing at their address, these facts can help show that within the prescribed time, these taxpayers were unable to act or have someone else act on their behalf, as stipulated in subsection 167(5) of the Act.

[21] In this case, there was no change of address and no evidence that the Applicants had been absent from their homes for long periods of time when the confirmation notices were sent. The only evidence from the Applicants was that they did not receive the confirmation notices.

[22] On a balance of evidence, it is impossible for me to believe this version of the facts.

[23] Consequently, the applications must be dismissed.

Signed at Ottawa, Canada this 4th day of March 2004.

“Louise Lamarre Proulx”

Lamarre Proulx J.

Translation certified true
on this 23rd day of December 2004 .

Julie Oliveira, Translator

CITATION: 2004TCC198

COURT FILE Nos.: 2003-3213(IT)APP, 2003-3214(IT)APP
et 2003-3212(IT)APP

STYLES OF CAUSE: Sylvie Deschamps v. The Queen
Guy Deschamps v. The Queen
Richard Deschamps v. The Queen

PLACE OF HEARING: Montréal, Québec

DATE OF HEARING: December 10, 2003

REASONS FOR JUDGMENT BY: The Honourable Justice Louise
Lamarre Proulx

DATE OF ORDER: March 4, 2004

APPEARANCES:

For the Applicants: Daniel Charpentier

For the Respondent: Agathe Cavanagh (Law student)

COUNSEL OF RECORD:

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