

Citation: 2007TCC364

2004-3973(IT)G

BETWEEN:

ROCCO GALATI,

Appellant,

- and -

HER MAJESTY THE QUEEN,

vs

Respondent.

**CERTIFICATION OF TRANSCRIPT OF
REASONS FOR JUDGMENT**

Let the attached certified transcript of the Reasons for Judgment delivered orally from the Bench at Toronto, Ontario on April 24, 2007, be filed.

"E.A. Bowie"

Bowie J.

Signed in Ottawa, on June 27th, 2007.

Court File No. 2004-3973 (IT)G

TAX COURT OF CANADA

IN RE: the Income Tax Act

BETWEEN:

ROCCO GALATI

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

**ORAL REASONS FOR ORDER DELIVERED BY
MR. JUSTICE ERIC A. BOWIE
in the Courts Administration Service,
Federal Judicial Centre, 180 Queen Street West,
Toronto, Ontario
on Tuesday, April 24, 2007 at 11:17 a .m.**

APPEARANCES:

Mr. Peter Martin

for the Appellant

Mr. Andre LeBlanc

for the Respondent

Also Present:

Mr. Colin Nethercut

Court Registrar

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1 Toronto, Ontario

2 --- Whereupon the excerpt commences at 11:17 a.m.
3 on Tuesday, April 24, 2007.

4 THE REGISTRAR: The hearing is
5 resumed.

6 DECISION FROM THE BENCH:

7 JUSTICE BOWIE: The affidavit of
8 Mr. Berini certainly satisfies me that there has
9 been a good deal of delay in this matter. To some
10 extent, the delay is explained but I do not think
11 that the explanation to be found in the affidavit
12 of Lisa Moon Sami(ph) satisfactorily explains all
13 of that delay.

14 Having said that, the appellant
15 has paid the tax; that does not seem to be in
16 dispute. There is no evidence of specific
17 prejudice to the respondent by the delay that can=t
18 be compensated in costs.

19 I understand the respondent=s
20 frustration at trying to get this matter into
21 court. There has been a considerable volume of
22 correspondence exchanged to that end. It might
23 have been more effective to have a bit less
24 correspondence and a considerably earlier motion.

25 So far as I can make out, the

1 Order of Mr. Justice Archambault was made on a
2 status hearing on the initiative of the Court
3 rather than either of the parties.

4 If I understand correctly, the
5 appellant has at this point delivered a list of
6 documents. There was some suggestion, at least in
7 argument this morning, that perhaps that list of
8 documents is not complete.

9 All in all, I don=t think in those
10 circumstances that it would be appropriate to
11 dismiss this action at this point without the
12 appellant having the benefit of a trial, if he
13 truly wants a trial. Whether he wants a trial is
14 something that can only be found out by fixing a
15 trial date; I propose to do that.

16 There are lots of dates available
17 during July and August. Mr. Martin, what is the
18 appellant=s availability?

19 MR. MARTIN: The appellant is
20 available; the best dates would be the last week of
21 July or the last week of August.

22 JUSTICE BOWIE: Mr. LeBlanc?

23 MR. LEBLANC: The last week of
24 August would do.

25 JUSTICE BOWIE: The last week of

1 August?

2 MR. LEBLANC: Yes.

3 JUSTICE BOWIE: A little earlier,
4 you wanted the earliest possible date.

5 MR. LEBLANC: I had the choice in
6 being at my cottage in the last week of July or
7 spending it with Mr. Galati. I think I prefer the
8 last week of August. I have been waiting so many
9 years.

10 JUSTICE BOWIE: As long as both
11 sides are happy with the last week of August, so be
12 it.

13 How long is it going to take?
14 Mr. Martin, how long is the appellant going to need
15 to put in his case?

16 MR. MARTIN: Unfortunately, I
17 haven't actually addressed that issue with Mr.
18 Galati himself. I can only go on the basis of what
19 I see before me. I am really hesitant to even give
20 you a time estimation. I think my friend would
21 perhaps ...

22 JUSTICE BOWIE: Mr. LeBlanc, yes?

23 MR. LEBLANC: Yes. Since we only
24 have two or three properties to deal with, but ...

25 JUSTICE BOWIE: We have a whole

1 week of August 27.

2 MR. LEBLANC: I believe that a day
3 might ... it depends on how many witnesses they are
4 going to call. And if Mr. Luc Galati is the only
5 witness, it seems that it is going to be, likely
6 going to be a very short testimony, depending on
7 his condition that day.

8 But a day might be short. Maybe
9 we can go safely with two days. If that is too
10 long, they can advise.

11 MR. MARTIN: We can advise, yes.

12 JUSTICE BOWIE: You probably don=t
13 want to start on a Monday, given the time of year.

14 MR. LEBLANC: You are correct.

15 JUSTICE BOWIE: I am going to
16 suggest Tuesday, August 28. I am going to ask you
17 both to indicate to the trial coordinator within a
18 couple of weeks, let=s say by the end of next week,
19 what your best estimate is. I think Mr. Martin, as
20 the appellant, you are the one from whom that
21 estimate is most important.

22 MR. MARTIN: Yes, certainly.

23 JUSTICE BOWIE: If you would
24 convey that to the trial coordinator and to Mr.
25 LeBlanc, Mr. LeBlanc will then convey to the trial

1 coordinator and to you what his estimate is of the
2 time to put in his case.

3 Alternatively, the two of you
4 could get together and agree on a length of time
5 and then jointly tell the trial coordinator what
6 you have settled on.

7 MR. MARTIN: Certainly.

8 JUSTICE BOWIE: I leave it up to
9 the two of you to do it, whichever of those ways
10 you like. But the whole week of August 27 is
11 available. If you decide you want a whole week,
12 then do it quickly and we will give you that whole
13 week. Otherwise, you can have all of the four
14 remaining days or so much of it as you need. I
15 think that is the best we can do. If you let us
16 know within a couple of weeks that it is less than
17 four days, we will be able to fill the rest of that
18 time with something else.

19 MR. LEBLANC: Thank you, very
20 much.

21 JUSTICE BOWIE: If either party
22 wants to have an examination for discovery, they
23 can have it by the end of May -- the end of May or
24 not at all. If either party has a discovery and
25 there are undertakings resulting from it, they are

1 to be fulfilled by the end of June. If there are
2 to be any supplementary lists of documents, they
3 are to be filed at least a week before any
4 scheduled examination for discovery or they are
5 going to require leave of the Court to file them.

6 In other words, Mr. Martin, if
7 there is a discovery scheduled to be held in the
8 middle of May, you can file a supplementary list
9 but not later than seven days before that
10 examination for discovery is scheduled to be held.

11 It is always possible that something pops out on
12 either side at the last minute, and a supplementary
13 list seems to be a desirable thing to file. But if
14 it is after that deadline of a week before any
15 scheduled discovery, then it is going to require
16 leave of a judge and the judge is going to be me
17 because I am going to become the case management
18 judge in respect of this matter. Any order
19 granting leave to file a supplementary list beyond
20 that date would require very convincing evidence as
21 to why that document or the documents on that list
22 had not been included in an earlier list.

23 MR. LEBLANC: Justice, considering
24 that the seven days prior to discovery will be
25 short in terms of notice, can we include in the

1 order that the respondent be provided as well with
2 a copy of the additional documents listed? That
3 should be for either party, additional documents --
4 not filing with the Court.

5 JUSTICE BOWIE: You mean copies of
6 the document, along with the list?

7 MR. LEBLANC: Yes. Because the
8 list may not be very helpful.

9 JUSTICE BOWIE: Yes. Any
10 supplementary list, if it is to be filed, is to be
11 accompanied by copies of the documents on the list.

12 MR. LEBLANC: For serving
13 purposes, certainly -- not for filing, but for
14 serving purposes.

15 JUSTICE BOWIE: For serving
16 purposes, yes, not filing.

17 MR. LEBLANC: Thank you.

18 JUSTICE BOWIE: If either party
19 wants to have a case management conference at any
20 point in time then they can apply to the trial
21 coordinator to arrange for a telephone conference.

22 I think we should have a telephone
23 conference in any event. During the summer is a
24 difficult time to do it, perhaps. Is a telephone
25 conference in the last week of July something that

1 could be easily arranged, or the first week of
2 August?

3 MR. LEBLANC: Or the third week of
4 July would be preferred.

5 JUSTICE BOWIE: The third week of
6 July. Mr. Martin?

7 MR. MARTIN: I am sure that would
8 be fine.

9 JUSTICE BOWIE: All right. I
10 think we should do that. In an ideal world, which
11 this seldom is, it will take about three minutes
12 because you will both tell me that everything is on
13 track for trial at the end of August. I think I
14 would take some comfort from hearing that.

15 Mr. Martin, you are going to be on
16 the record for the appellant?

17 MR. MARTIN: I am not sure if I
18 am at this stage. I haven't discussed the scope of
19 my retainer with Mr. Galati.

20 JUSTICE BOWIE: All right. I have
21 a feeling that the Rules provide that an appearance
22 automatically gets you on the record, unless the
23 appearance is specifically for a limited purpose,
24 or something of the kind. It is not a rule I have
25 read lately.

1 MR. MARTIN: Yes.

2 JUSTICE BOWIE: I simply caution
3 you that you might want to look at that rule and
4 see whether, if you are not going to be on the
5 record henceforth, you may have to so indicate to
6 the Court in writing or something of the kind.

7 MR. MARTIN: Yes. Thank you.

8 JUSTICE BOWIE: Or you may find
9 that you are solicitor of record by operation of
10 the rule.

11 MR. MARTIN: Yes.

12 JUSTICE BOWIE: Anything else that
13 either of you would like to include in the order?
14 There is the matter of costs, of course.

15 MR. LEBLANC: Yes. We would like
16 the matter of costs to be payable forthwith, to the
17 respondent.

18 JUSTICE BOWIE: Yes.

19 MR. MARTIN: Justice, I was
20 mentioning in my submissions at the end there,
21 although there were lots of reasons for my friend=s
22 motion, as I said, perhaps if it had been brought
23 before January of this year, I think that as a
24 result of what happened in January, it was
25 inappropriate for my friend to bring this motion.

1 I don=t think is a time when costs would be
2 appropriate.

3 In the circumstances of the
4 history, I am not asking for costs for today=s
5 appearance. But I also don=t think that my friend
6 should be entitled to them because this isn=t the
7 appropriate time for him to have brought this
8 motion.

9 JUSTICE BOWIE: I know your
10 position with respect to costs. Given the totality
11 of the history of this matter, I think it is
12 appropriate to make an order as to costs. I think
13 a thousand dollars payable forthwith for the two
14 motions that were before us this morning is
15 appropriate.

16 The cases I think indicate pretty
17 clearly that if the costs are in any event of the
18 cause, as they should be in this case, that they
19 should be payable forthwith. I am going to make
20 that by May 7.

21 If there is nothing else,
22 gentlemen?

23 MR. LEBLANC: No, we thank you.

24 JUSTICE BOWIE: We will take five
25 minutes and then hear the next motion.

1 MR. LEBLANC: Thank you, sir.

2 MR. MARTIN: Thank you.

3 THE REGISTRAR: The Court is in
4 recess for five minutes.

5 --- Whereupon the hearing was concluded at 11:30
6 a.m. on Tuesday, April 24, 2007.

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