

Citation: 2009 TCC 503
Date: 20091015
Docket: 2007-1643(IT)G

BETWEEN:

LINDA LOVIG,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Counsel for the Appellant: Douglas Welder
Counsel for the Respondent: Johanna Russell

REASONS FOR JUDGMENT

(Delivered orally by teleconference on September 4, 2009,
in Vancouver, British Columbia.)

McArthur J.

[1] This motion is for an Order dismissing the appeal of the Appellant under sections 64 and 125(7) of *The Tax Court of Canada General Procedure (Rules)*. In the alternative, for an Order directing the Appellant to provide written responses and documents in relation to all 41 undertakings given during the September 18, 2008 examinations for discovery and it is for costs of the motion.

[2] The grounds for the motion include that the Appellant has failed to provide answers to 28 of the 41 undertakings that were given during the September 18, 2008 examination for discovery; the Appellant is in breach of the May 22, 2008 Order of

Beaubier J. and the March 23, 2009 Order of Campbell J. and the Appellant has failed to be proactive or to prosecute her appeal with due dispatch.

[3] The Appellant was represented by counsel Douglas W. Welder. Neither the Appellant or her spouse were present. At the outset the Appellant belatedly attempted to file an affidavit which I refused upon hearing the Minister's counsel. I refused it because of the lateness of the affidavit and the history of the Appellant's tardiness.

[4] Mr. Welder advised in light of not being permitted to file the affidavit, he had no comments. I stated that the motion to dismiss the appeal was granted based on the Minister counsel's presentations and that these reasons would follow.

[5] The attempted late filing of the Appellant's affidavit again, is refused. I believe the Appellant has over a long period of time flaunted this Court's procedures. Subsection 67(6) of our *Rules* stipulates that affidavits or other documentary material to be used at the hearing of a motion shall be filed and served at least seven days before the date on which the motion is heard.

[6] I am in agreement with counsel Johanna Russell's 12-page comprehensive written submissions. The short version is contained in the conclusion which I adopt as my own.

[7] The Appellant gave inadequate responses to undertakings, such as stating that the answers were "previously provided, can't do again as records are in Canada and the Appellant is not."

[8] I find that an absolutely unsatisfactory response. Many of these 21 undertakings only require an explanation, and not additional documents and an explanation was clearly asked for, and should have been clearly responded to. The Appellant, chose not to do this despite many requests to do so. Her inaction is consistent with the pattern of her conduct of this litigation. It has taken far too much time to obtain documents and the reasons that she relies on.

[9] It is clear in the present case that the Appellant has no interest in complying with the Orders of Beaubier J. and Campbell J., requiring her to provide answers to undertakings by specific deadlines. No reasonable explanation was given. Any compliance by the Appellant with the Status Hearing Order has been superficial and not made with any real attempt to meet the obligations of the discovery process. The list of documents she has provided has been inadequate. One is given the impression that the assessment is a nuisance to the Appellant that may disappear if she ignores it.

[10] Although she has filed a list of documents and presented herself for examination and provided some responses to undertakings, this has not resulted in sufficient clarity to proceed. I believe that the appeal is properly dismissed on the basis that the Appellant has failed to prosecute her appeal with due dispatch. It is her obligation to be proactive and not reactive to the steps taken by the Respondent. Under section 64 of the *Rules*, and on the basis that the Appellant has failed to comply with two Orders of this Court under section 125(7) of the *Rules*, the appeal is dismissed.

Signed at Ottawa, Canada, this 15th day of October 2009.

“C.H. McArthur”

McArthur J.

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STYLE OF CAUSE: LINDA LOVIG AND THE QUEEN
PLACE OF HEARING: Vancouver, British Columbia
DATE OF HEARING: September 4, 2009
REASONS FOR JUDGMENT BY: The Honourable Justice C.H. McArthur
DATE OF JUDGMENT: October 15, 2009

APPEARANCES:

Counsel for the Appellant: Douglas Welder
Counsel for the Respondent: Johanna Russell

COUNSEL OF RECORD:

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