

BETWEEN:

FIDUCIE DAUPHIN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Motion heard on October 17, 2011, at Montréal, Quebec.

Before: The Honourable Justice Johanne D'Auray

Appearances:

For the Appellant:

No one appeared

Counsel for the Respondent:

Marie-Aimée Cantin

ORDER

Upon the motion brought by the Respondent asking that the appeals be dismissed pursuant to the *Tax Court of Canada Rules (General Procedure)*;

And upon the Respondent's submissions;

The motion is allowed with costs.

The appeal from the reassessment made under the *Income Tax Act*, which was issued on April 21, 2009, and which bears the number 718161, is dismissed.

Signed at Ottawa, Canada, this 31st day of October 2011.

“Johanne D'Auray”

D'Auray J.

Translation certified true
on this 30th day of August 2023.

Melissa Paquette, Jurilinguist

Docket: 2010-1112(IT)G

BETWEEN:

FIDUCIE DAUPHIN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Before: The Honourable Justice Johanne D'Auray

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For the Appellant:

No one appeared

Counsel for the Respondent:

Marie-Aimée Cantin

ORDER

Upon the motion brought by the Respondent asking that the appeals be dismissed pursuant to the *Tax Court of Canada Rules (General Procedure)*;

And upon the Respondent's submissions;

The motion is allowed with costs.

The appeals from the reassessments made under the *Income Tax Act* for the 2006 and 2007 taxation years are dismissed.

Signed at Ottawa, Canada, this 31st day of October 2011.

"Johanne D'Auray"

D'Auray J.

Translation certified true
on this 30th day of August 2023.

Melissa Paquette, Jurilinguist

Citation: 2011 TCC 499
Date: 20111031
Dockets: 2010-1111(IT)G
2010-1112(IT)G

BETWEEN:

FIDUCIE DAUPHIN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

D'Auray J.

[1] On September 15, 2011, I heard a motion to dismiss the appeals and, alternatively, a motion to homologate a transaction, which was filed by the Respondent.

[2] On the same day, namely, on September 15, counsel for the Appellant submitted to this Court a notice of removal of counsel of record pursuant to section 33 of the *Tax Court of Canada Rules (General Procedure)* (the Rules).

[3] With respect to the motion to dismiss the appeals that was brought by the Respondent on September 7, 2011, I am of the opinion that it is important, in order to give a better understanding of my order, that I state the facts pleaded in support of this motion:

(a) Since September 2010, the parties, through their counsel, have been involved in ongoing discussions in order to settle the two appeals;

(b) On January 24, 2011, counsel for the Respondent submitted a written settlement offer to counsel for the Appellant;

- (c) Following several exchanges, counsel for the Appellant notified counsel for the Respondent that he had been retained to attend a meeting for the purpose of reaching a final agreement with respect to the Appellant's two appeals;
- (d) To this end, counsel for the parties met on May 19, 2011;
- (e) On May 25, 2011, the Court made an order in each of the Appellant's files directing the parties to appear before the Court on June 8, 2011, to set out the reasons why the appeals should not be dismissed for delay;
- (f) On June 3, 2011, a new settlement proposal was presented by counsel for the Respondent to counsel for the Appellant;
- (g) On June 7, 2011, counsel for the Appellant notified the Court in writing that the Appellant had accepted the proposal dated June 3, 2011;
- (h) At the status hearing before Favreau J., counsel for the Appellant reiterated that his client had accepted the Respondent's settlement offer dated June 3, 2011;
- (i) At that same hearing, counsel for the Appellant placed in the court file a copy of the retainer dated June 7, 2011, signed by one of his client's representatives, Chantal Frégault;
- (j) The Court gave the parties 30 days, or until July 8, 2011, to finalize the files;
- (k) On June 23, 2011, copies of the out-of-court agreements were sent to counsel for the Appellant;
- (l) On July 8 and 13, 2011, counsel for the Appellant requested that minor additions be made to the out-of-court agreements;
- (m) On July 13, 2011, copies of the amended out-of-court agreements were sent to counsel for the Appellant. Furthermore, hypothetical calculations with respect to the tax payable by the Appellant under the terms of the agreements were provided to counsel for the Appellant;
- (n) Having not heard from counsel for the Appellant, counsel for the Respondent called counsel for the Appellant on July 21 and 28, 2011, and left messages asking him to call her back;

- (o) On July 28, 2011, counsel for the Appellant notified counsel for the Respondent that his retainer had been terminated;
- (p) As of September 2, 2011, the date on which the Respondent signed and filed the motion to dismiss the appeals, the Appellant had not served notice that it would be represented by new counsel;
- (q) As of September 2, 2011, counsel for the Appellant had not filed notice of removal of counsel of record;
- (r) As of September 2, 2011, the out-of-court agreements had not been signed either by the Appellant or by counsel for the Appellant;
- (s) Neither the Appellant's representatives nor counsel for the Appellant had sent the contact information of the Appellant's trustees to counsel for the Respondent.

[4] At the time of the roll call for the hearing of the motions on September 15, 2011, counsel for the Appellant (Mr. Sénéchal) and counsel for the Respondent (Marie-Aimée Cantin and Alain Gareau) were present; the Appellant's trustees did not appear.

[5] At the hearing, counsel for the Appellant filed a notice of removal of counsel of record duly served to the Appellant and the Respondent. However, he noted that, pursuant to the Rules, he was not required to file this notice because his client had terminated his retainer. He had done so because counsel for the Respondent had insisted on it.

[6] The provisions of the Rules of this Court governing representation by counsel are as follows:

Representation by Counsel

30. (1) Subject to subsection (3), a party to a proceeding who is an individual may act in person or be represented by counsel.

(2) Where a party to a proceeding is not an individual, that party shall be represented by counsel except with leave of the Court and on any conditions that it may determine.

(3) Unless the Court orders otherwise, a person who is the representative of a party under a legal disability in a proceeding shall be represented by counsel, except where that person is also counsel acting in such a capacity.

Counsel of Record

31. (1) Subject to the other provisions of this section where a party has taken any step in a proceeding by a document signed by counsel, that person shall be the counsel of record for that party until a change is effected in a manner provided for by this section.

(2) A counsel of record shall act as and remain the counsel of record until,

(a) the client delivers a notice under section 32,

(b) such counsel has served a notice of intention to cease to act as counsel and the provisions of subsection 33(1) have been complied with, or

(c) a direction removing the counsel from the record has been entered, served on the client and every other party and filed with proof of service.

Change in Representation by a Party

32. (1) A party who has a counsel of record may change the counsel of record by serving on the counsel and every other party and filing, with proof of service, a notice giving the name, address for service and telephone number of the new counsel.

(2) A party acting in person may appoint a counsel of record by serving on every other party and filing, with proof of service, a notice giving the name, address for service and telephone number of the counsel of record.

(3) A party who has a counsel of record may elect to act in person by serving on the counsel and every other party and filing with proof of service, a notice of intention to act in person giving the party's address for service and telephone number.

Removal of Counsel of Record — By Notice

33. (1) A counsel of record may at any time before

(a) a joint application has been made to fix the time and place of hearing, or

(b) a proceeding has been listed for hearing,

whichever is earlier, serve on a party who is the client and upon all other parties, a written notice of intention to cease to act as counsel of record which notice shall state the last known address of the client.

(2) Service of the notice shall be made on the client personally or by mailing a copy to the last known address of the client.

(3) Upon filing the notice with proof of service, and upon the expiry of ten days after service upon the client, the counsel shall cease to be counsel of record and his or her address shall cease to be the address for service of the client.

(4) The address for service of the client shall thereafter be the address contained in the notice, until the client has filed a document that sets out another address for service.

Removal of Counsel of Record — By Application

34. (1) At any time after,

- (a) a joint application has been made to fix the time and place of hearing, or
- (b) a proceeding has been listed for hearing,

whichever is earlier, a counsel may move, on notice to his or her client, for a direction to remove him or her as counsel of record.

(2) A notice of motion for the removal of a counsel from the record and a direction under subsection (1) shall be served on the client personally or by sending a copy by mail to the last known address of the client.

(3) The direction to remove a counsel from the record shall set out the last known address of the client.

(4) The address for service of the client shall thereafter be the address contained in the direction, until the client has filed a document that sets out another address for service.

[7] According to section 33 of the Rules, contrary to counsel for the Appellant's claim, he was indeed required to file a notice of removal of counsel of record with proof of service; it was not simply a matter of courtesy or discretionary formality. Since his client did not follow the steps outlined in section 32 of the Rules (i.e., it failed to notify its counsel and the other parties that from then on, it would be represented by different counsel), he was still counsel of record pursuant to section 31 of the Rules.

[8] That being said, because counsel for the Appellant had served and filed his notice of removal of counsel of record, pursuant to subsection 33(3) of the Rules, he was removed as counsel in these appeals 10 days after serving notice to his client.

[9] It is important to note that at the hearing, counsel for the Appellant and for the Respondent indicated to me that they had not had any contact with the Appellant's trustees.

[10] With respect to the motion to dismiss the appeal, given that counsel for the Respondent established that the Appellant's trustees had been duly served¹ and that the trustees had neither appeared nor notified or contacted the Court or their counsel or counsel for the Respondent, I allowed the motion to dismiss the appeal in a decision rendered orally.

[11] On the same day, namely, during the afternoon of September 15, 2011, I received a letter from counsel for the Respondent informing me that at the hearing, she had forgotten to bring to my attention a letter signed by François Bergeron, a trustee of the Appellant, that she had received by fax on September 14, 2011, the day before the hearing.

[12] In a letter dated September 12, 2011, addressed to counsel for the Respondent, the Appellant's trustee wrote the following:

[TRANSLATION]

Further to your document entitled "Motion for the Dismissal of the Appeal" dated September 6, 2011, with respect to paragraphs 18 and 19, I would like to notify you that as a matter of fact, no counsel is representing Fiducie Dauphin. Since Mr. Sénéchal removed himself from the file, dropping us like "an old pair of socks" because of a lack of financial resources on our part, I am asking you, Ms. Cantin, if you would be so kind as to inform me in writing of the steps that must be taken to finalize this file.

Sincerely,

François Bergeron, "Trustee"
20 Maurice-Aveline St., Apt. 303
Ste-Adèle, Quebec J8B 2M8

¹ The service summaries filed by counsel for the Respondent show that the trustees had been duly served by bailiff the motion to dismiss the appeals.

[13] In light of this new fact, given that my order had not been signed, I immediately asked the hearings coordinator, Linda Martel, to notify the parties that I would summon them again to discuss the conduct of these appeals.

[14] I was of the opinion that, had I been notified of the letter received from Mr. Bergeron, I would have adjourned the hearing so that the Respondent could contact Mr. Bergeron. I would have also asked that a new order be prepared and sent to the address indicated in Mr. Bergeron's letter to discuss the conduct of this matter. The dismissal of an appeal has serious consequences for a taxpayer. In his letter, the trustee expressed an interest in finalizing the Appellant's file.

[15] In that regard, pursuant to an order made by this Court on September 21, 2011, the parties were required to appear before this Court in Montréal on Monday, October 17, 2011, at 9:30 a.m. to discuss the next steps of the appeals.

[16] The Appellant did not appear at the hearing on October 17 even though it was duly served. The Respondent established that it had served a letter notifying the Appellant that, following my order, it was required to appear before this Court on October 17, 2011, and that, pursuant to the Rules, it had to be represented by counsel. The Respondent also asked the Appellant to contact Mr. Gareau regarding the conduct of the matter.

[17] The Respondent sent this letter to the Appellant to the address specified by trustee Mr. Bergeron in his letter of September 12, 2011, by Registered Mail, by regular mail and by the courier Purolator (see exhibits I-1 to I-7).

[18] This Court also sent the Notice of Hearing through various channels, namely, by regular mail and by Registered Mail. Unfortunately, the Registry indicated an incorrect apartment number; specifically, it wrote Apartment 3 instead of Apartment 303 as the address. That said, on September 30 and October 5, 2011, the Registry resent, by regular mail, the order directing the Appellant to appear before the Court on October 17, 2011, at 9:30 a.m.

[19] Given its conduct, the Appellant clearly does not intend to proceed with its appeal. By order dated September 21, 2011, this Court gave the Appellant the opportunity to explain itself and to continue its appeal by summoning it to appear on October 17, 2011. The Appellant again chose not to appear, a choice it had also made as regards the hearing on September 15, 2011, even though it had been duly served.

[20] Consequently, the motion to dismiss the appeals is allowed.

[21] As a result of this order, I will not have to rule on the motion for homologation of the decision, which has already lapsed.

[22] The appeals from the reassessments made under the *Income Tax Act* for the 2006 and 2007 taxation years, as well as the appeal from the reassessment made under the *Income Tax Act*, which was issued on April 21, 2009, and which bears the number 718161, are dismissed.

[23] With costs.

Signed at Ottawa, Canada, this 31st day of October 2011.

“Johanne D’Auray”

D’Auray J.

CITATION: 2011 TCC 499

COURT FILE NOS.: 2010-1111(IT)G
2010-1112(IT)G

STYLE OF CAUSE: FIDUCIE DAUPHIN v. THE
QUEEN

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: October 17, 2011

REASONS FOR ORDER BY: The Honourable Justice Johanne
D'Auray

DATE OF ORDER: October 31, 2011

APPEARANCES:

For the Appellant: No one appeared
Counsel for the Respondent: Marie-Aimée Cantin

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: Myles J. Kirvan
Deputy Attorney General of Canada
Ottawa, Canada