

Docket: 2009-3634(IT)G

BETWEEN:

JACQUES POISSON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Motion heard on November 4, 2011, at Sherbrooke, Quebec.

Before: The Honourable Justice Johanne D'Auray

Appearances:

Counsel for the appellant:

Robert Jodoin (absent)

Counsel for the respondent:

Mathieu Tanguay

ORDER

Upon motion brought by the respondent for the dismissal of the appeal;

Upon reading the affidavit of Simon Vincent;

And upon hearing the submissions of counsel for the respondent at the hearing;

The motion to dismiss the appeal is granted, and the appeals from the reassessments made under the *Income Tax Act* for the 2003 and 2004 taxation years are dismissed.

With respect to costs, the Court orders the parties to submit to the Court, in accordance with the Reasons for Order, written representations within 60 days of the date of signature of this Order.

Accordingly, the issuance of an order regarding costs is deferred.

Signed at Ottawa, Canada, this 16th day of November 2011.

"Johanne D'Auray"

D'Auray J.

Translation certified true
on this 22nd day of December 2011.

Erich Klein, Revisor

Citation: 2011 TCC 524
Date: 20111116
Docket: 2009-3634(IT)G

BETWEEN:

JACQUES POISSON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR ORDER

D'Auray J.

[1] The motion herein brought by the respondent seeks under sections 64 and 68 of the *Tax Court of Canada Rules (General Procedure)* (**Rules**) to have the appeal dismissed on grounds of delay in that the appellant failed to prosecute his appeal with due dispatch.

[2] In support of the motion, the deponent, Simon Vincent, alleges the following facts:

[TRANSLATION]

1. On November 5, 2010, the appellant's representative wrote to the Court to request a stay of proceedings in this case until the Court of Quebec rendered a judgment in file number 460-80-000609-097, which was scheduled to be heard on April 29, 2011.
2. The appellant's representative thus committed to having this file linked to the judgment rendered by the Court of Quebec.
3. On July 15, 2011, the Court of Quebec rendered judgment in file number 460-80-000609-097, dismissing the originating motion of the plaintiff (the appellant herein).

4. On July 25, 2011, the respondent was informed of the judgment by counsel for the Deputy Minister of Revenue of Quebec.
5. On July 28, 2011, the respondent tried unsuccessfully to reach the appellant's representative.
6. On July 28, 2011 as well, the respondent's representative sent a letter to the appellant's representative asking him to inform him of his intentions with regard to prosecuting this file.
7. On August 25, 2011, after several unsuccessful attempts to reach the appellant's representative, the respondent's representative sent him a second letter in which he reiterated the request of July 28, 2011.
8. Each time the respondent's representative attempted to contact the appellant's representative, he made sure that the appellant's representative was not on vacation.
9. The appellant's representative never returned the calls of the respondent's representative or responded to his written requests.

[3] Counsel for the appellant, Mr. Jodoin, did not appear at the hearing of the motion to dismiss the appeal, on November 4, 2011, even though he had been duly served by the respondent.

[4] With regard to that, counsel for the respondent indicated at the hearing that his colleague, Simon Vincent, had received from the firm Robert Jodoin, Société d'avocats S.E.N.C.R.L., the day before the hearing, namely, November 3, 2011, a letter stating the following:

[TRANSLATION]

The above-referenced file has been set down for hearing this Friday, November 4, at the Sherbrooke Courthouse.

Our client has not given us a mandate to contest your motion. His financial situation is, unfortunately, very bad.

Sincerely,

ROBERT JODOIN, Société d'avocats S.E.N.C.R.L.

(s) Sylvain Lagüe,
Counsel

[5] I have considered the affidavit evidence in this case, which I have set out above, and the submissions of counsel for the respondent at the hearing, reiterating the following facts concerning the conduct of Mr. Jodoin:

- He agreed that the outcome of the federal file be linked to the judgment rendered by the Court of Quebec in the provincial file, as shown by his letter dated November 5, 2010, sent to the respondent and to this Court.
- He did not send to the respondent, as agreed, the judgment he had obtained from the Court of Quebec; instead, the respondent received the Court of Quebec judgment from counsel for the Deputy Minister of Revenue of Quebec.
- He did not consider it necessary to inform counsel for the respondent as to whether or not he intended to prosecute the appeal herein following the Court of Quebec judgment—and this despite the respondent's requests that he do so—until the day before the hearing of the motion to dismiss the appeal. Counsel who was to appear for the respondent was then already en route to Sherbrooke.

[6] I have considered as well the fact that Mr. Jodoin did not find it necessary to inform the Court that he would not be appearing at the hearing of the motion.

[7] In light of the above-mentioned facts and affidavit evidence, the motion to dismiss the appeal is granted.

[8] Accordingly, the appeals from the reassessments made under the *Income Tax Act* for the 2003 and 2004 taxation years are dismissed.

[9] As to costs, counsel for the respondent asks that I award an amount that is higher than that provided for in the Tariff and that the costs awarded be paid by counsel for the appellant. Counsel for the respondent relies for this on section 147 and paragraph 152(1)(b) of the Rules and on this Court's decision in *Dacosta*.¹

[10] The relevant parts of sections 147 and 152 of the Rules read as follows:

147. (1) The Court may determine the amount of the costs of all parties involved in any proceeding, the allocation of those costs and the persons required to pay them.

¹ *Dacosta v. The Queen*, 2008 DTC 3008.

(2) Costs may be awarded to or against the Crown.

(3) In exercising its discretionary power pursuant to subsection (1) the Court may consider,

- (a) the result of the proceeding,
- (b) the amounts in issue,
- (c) the importance of the issues,
- (d) any offer of settlement made in writing,
- (e) the volume of work,
- (f) the complexity of the issues,
- (g) the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding,
- (h) the denial or the neglect or refusal of any party to admit anything that should have been admitted,
- (i) whether any stage in the proceedings was,
 - (i) improper, vexatious, or unnecessary, or
 - (ii) taken through negligence, mistake or excessive caution,
- (j) any other matter relevant to the question of costs.

(4) The Court may fix all or part of the costs with or without reference to Schedule II, Tariff B and, further, it may award a lump sum in lieu of or in addition to any taxed costs.

...

152. (1) Where a counsel for a party has caused costs to be incurred improperly or without reasonable cause or to be wasted by undue delay, misconduct or other default, the Court may make a direction,

- (a) disallowing some or all of the costs as between the counsel and the client,
- (b) directing the counsel to reimburse the client for any costs that the client has been ordered to pay to any other party, and

(c) requiring the counsel to indemnify any other party against costs payable by that party.

(2) A direction under subsection (1) may be made by the Court on its own initiative or on the motion of any party to the proceeding, but no such direction shall be made unless the counsel is given a reasonable opportunity to make representations to the Court.

(3) The Court may direct that notice of a direction against a counsel under subsection (1) be given to the client in the manner specified in the direction.

[Emphasis added.]

[11] The respondent also argued that, if counsel for the appellant had honoured his commitments, he would have forwarded the Court of Quebec judgment as contemplated. He would have returned phone calls or responded to letters and would have advised the respondent whether his client intended to proceed with the appeal or not.

[12] Costs would have been avoided because the respondent would not have had to continue managing the file, to prepare the motion to dismiss the appeal or to appear before this Court.

[13] Under subsection 152(2) of the Rules, before awarding costs as requested in this case, I must give counsel for the appellant an opportunity to make representations.

[14] Accordingly, further to the respondent's request regarding costs under paragraph 152(1)(b) of the Rules, I order counsel for the appellant to send me written representations.

[15] I also order counsel for the respondent to send me written representations with respect to his request regarding costs.

[16] The written representations from counsel for the appellant and counsel for the respondent must be received within 60 days of the signature of the order.

[17] Accordingly, I defer my decision on costs.

Signed at Ottawa, Canada, this 16th day of November 2011.

"Johanne D'Auray"

D'Auray J.

Translation certified true
on this 22nd day of December 2011.

Erich Klein, Revisor

CITATION: 2011 TCC 524
COURT FILE NO.: 2009-3634(IT)G
STYLE OF CAUSE: JACQUES POISSON v. THE QUEEN
PLACE OF HEARING: Sherbrooke, Quebec
DATE OF HEARING: November 4, 2011
REASONS FOR ORDER BY: The Honourable Justice Johanne D'Auray
DATE OF ORDER: November 16, 2011

APPEARANCES:

Counsel for the appellant: Robert Jodoin (absent)
Counsel for the respondent: Mathieu Tanguay

COUNSEL OF RECORD:

For the appellant:

Name: Robert Jodoin
Firm: Robert Jodoin, Société d'avocats
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Bromont, Quebec

For the respondent:

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