

BETWEEN:

JOSÉE LEGAULT,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Application heard on August 26, 2013, at Ottawa, Canada

Before: The Honourable Justice Paul Bédard

Appearances:

For the applicant:	The applicant herself
Counsel for the respondent:	Nicolas C. Ammerlaan

JUDGMENT

Considering the application for an order extending the time to appeal from a reassessment made under the *Excise Tax Act*, the notice of which is dated September 9, 2010;

And considering the parties' claims;

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

Signed at Ottawa, Canada, this 2nd day of October 2013.

"Paul Bédard"

Bédard J.

Citation: 2013 TCC 313
Date: 20131002
Docket: 2013-804(GST)APP

BETWEEN:

JOSÉE LEGAULT,

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and

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Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Bédard J.

[1] On or around May 20, 2010, the applicant applied for a Goods and Services Tax (GST) New Housing Rebate. In a reassessment dated September 9, 2010, the respondent rendered a decision on the objection confirming the September 9, 2010, reassessment. The applicant did not appeal within the 90-day time period (which, in this case, expired on May 22, 2012) as provided under section 306 of the *Excise Tax Act* (ETA). On February 18, 2013 (nearly 9 months after the prescribed deadline to appeal) the applicant submitted an application to extend the time allowed to appeal.

[2] The respondent objects, indicating that

- (i) the applicant was not unable to act within the meaning of subparagraph 305(5)(b)(i) of the ETA;
- (ii) knowing the time limit for acting, the applicant did not intend to appeal from the September 9, 2010, assessment;
- (iii) the applicant did not submit her application as soon as circumstances allowed;

- (iv) the applicant did not show that there are reasonable grounds for the appeal.

[3] The applicant's testimony indicates that

- (i) she knew about the 90-day time limit to appeal;
- (ii) when she received the notice of confirmation on February 22, 2012, she was [TRANSLATION] "in shock" and felt unable to make a decision regarding the September 9, 2010, assessment;
- (iii) at the end of March 2012, she sent a letter to Marie-Ève Godin (who was in charge of the applicant's objection file) for explanations about the denial of her GST rebate. I note that the applicant did not present any documentary evidence of this. Additionally, I note that her testimony was contradicted by Ms. Godin's sworn statement (see Exhibit I-1) that she never received [TRANSLATION] "any verbal or written communications from Ms. Legault after February 9, 2012";
- (iv) on or around April 11, 2013, the director of her department (cheque printing centre for the Government of Canada) announced that her job would eventually be abolished (in this case, in April 2016) after the closure of the printing centre where she worked. After this announcement and considering the responsibilities related to her job, she had to continually manage crises. In addition to her work, which concerned her intensely, she also had to take care of her farm and the construction of her residence. In all, the applicant explained that because she was [TRANSLATION] "in shock" after receiving the notice of confirmation and she was very busy considering her personal and professional obligations, it was impossible for her to appeal within the prescribed time;
- (v) in October 2012, the applicant consulted a legal clinic to find out what her chances were of winning an appeal;
- (vi) in February 2013, the applicant finally decided to apply for an extension of the time prescribed to appeal.

Analysis and conclusion

[4] The relevant provisions of the ETA state:

Extension of time to appeal

305. (1) Where no appeal to the Tax Court under section 306 has been instituted within the time limited by that provision for doing so, a person may make an application to the Tax Court for an order extending the time within which an 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.

...

When order to be made

(5) No order shall be made under this section unless

- (a) the application is made within one year after the expiration of the time otherwise limited by this Part for appealing; and
- (b) the person demonstrates that
 - (i) within the time otherwise limited by this Part for appealing,
 - (A) the person was unable to act or to give a mandate to act in the person's name, or
 - (B) the person had a bona fide intention to appeal,
 - (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 it to be made, and
 - (iv) there are reasonable grounds for appealing from the assessment.

Was the appellant unable to act within the time prescribed to appeal?

[5] The applicant essentially claims that she was unable to act within the time prescribed to appeal because she was [TRANSLATION] "in shock" after the

respondent's refusal of her GST New Housing Rebate application and after the news that the printing centre was closing close and because she was too busy elsewhere (see paragraph 3).

[6] The applicant's reason for not acting, that she was [TRANSLATION] "in shock", does not seem very credible to me. For one, shock only lasts for a certain time. Unless there is medical proof, shock could not have had the effect of preventing the applicant from acting for almost eight months. However, this is exactly the amount of time that passed from February 2012 and October 2012, when she consulted professionals for the first time to learn what her rights were. At any rate, it is difficult to explain how the applicant, who claims to have been [TRANSLATION] "in shock", was able to adequately perform the very demanding tasks related to her job and her equally demanding personal duties. I feel that the applicant instead chose to not act within the time limit to appeal.

Did the appellant truly have the intention to appeal within the time provided to appeal?

[7] I also feel that the applicant did not have the intention to appeal within the time provided to appeal as the evidence shows that her intention to appeal only manifested itself for first time in October 2012 when she consulted professionals to learn what her rights were.

Was the application made as soon as circumstances permitted?

[8] I recall that the applicant explained that starting in October 2012, the situation settled down and that was when she consulted the professionals. However, it was only four months later that she filed her application for an extension. Considering the applicant did not present any evidence to explain the circumstances that prevented her from filing her application in October 2012, I feel that the applicant did not meet her burden of proof, which was to establish that the circumstances prevented her from making her application for an extension before February 18, 2013.

Did the applicant show that there are reasonable grounds for the appeal?

[9] Considering the applicant did not make any submissions on this, I also feel that her application for an extension must be dismissed.

[10] For these reasons, the application for an extension must be dismissed.

Signed at Ottawa, Canada, this 2nd day of October 2013.

"Paul Bédard"

Bédard J.

Translation certified true
on this 29th day of October 2013.
Elizabeth Tan, Translator

CITATION: 2013 TCC 313

COURT FILE NO.: 2013-804(GST)APP

STYLE OF CAUSE: JOSÉE LEGAULT v. HER MAJESTY THE QUEEN

PLACE OF HEARING: Ottawa, Canada

DATE OF HEARING: August 26, 2013

REASONS FOR JUDGMENT BY: The Honourable Justice Paul Bédard

DATE OF JUDGMENT: October 2, 2013

APPEARANCES:

For the applicant:	The applicant herself
Counsel for the respondent:	Nicolas C. Ammerlaan

COUNSEL OF RECORD:

For the applicant:

Name:

Firm:

For the respondent: William F. Pentney
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Ottawa, Canada