

**Date: 20081204**

**Docket: A-511-08**

**Citation: 2008 FCA 382**

**Present: SHARLOW J.A.**

**BETWEEN:**

**CANADA TRUSTCO MORTGAGE COMPANY**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on December 4, 2008.

**REASONS FOR ORDER BY:**

**SHARLOW J.A.**

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**BETWEEN:**

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**REASONS FOR ORDER**

**SHARLOW J.A.**

[1] The appellant Canada Trustco Mortgage Company seeks an order confirming that its notice of appeal was filed on time, or alternatively an order permitting the notice of appeal to be filed late. The Crown opposes the motion, and points out that if the motion is dismissed, the appeal must also be dismissed for want of jurisdiction.

[2] The appeal is from a judgment of the Tax Court of Canada dismissing Canada Trustco's appeal from two assessments under subsection 224(4) of the *Income Tax Act*, R.S.C. 1985, c. 1

(5<sup>th</sup> Supp.). The appeal was conducted under the *Tax Court of Canada Rules (General Procedure)*, SOR/90-588. The judgment was signed on August 29, 2008.

[3] A final judgment of the Tax Court in an appeal conducted under the *General Procedure Rules* may be appealed to this Court pursuant to paragraph 27(1.1)(a) of the *Federal Courts Act*, R.S.C. 1985, c. F-7. Paragraph 27(2)(b) of the *Federal Courts Act* establishes the mode of appeal and the time limit for bringing an appeal from a final judgment. It reads as follows:

27. (2) An appeal under this section shall be brought by filing a notice of appeal in the Registry of the Federal Court of Appeal

[...]

(b) in any other case, within 30 days, not including any days in July and August, after the pronouncement of the judgment or determination appealed from or within any further time that a judge of the Federal Court of Appeal may fix or allow before or after the end of those 30 days.

27. (2) L'appel interjeté dans le cadre du présent article est formé par le dépôt d'un avis au greffe de la Cour d'appel fédérale, dans le délai imparti à compter du prononcé du jugement en cause ou dans le délai supplémentaire qu'un juge de la Cour d'appel fédérale peut, soit avant soit après l'expiration de celui-ci, accorder. Le délai imparti est de :

[...]

b) trente jours, compte non tenu de juillet et août, dans le cas des autres jugements.

[4] The *Federal Courts Act* does not define the word “pronouncement”. Normally, in the case of a judgment rendered in writing by a judge of a superior court of record, a judgment would be considered to be “pronounced” when it has been signed and recorded by the registry. The latter step is often referred to as “entering” the judgment into the record of the court. In my view, that is the meaning that should be adopted in the case of a judgment of the Tax Court of Canada.

[5] Section 167 of the *General Procedure Rules* is consistent with this interpretation. It reads as follows:

167. (1) The Court shall dispose of an appeal or an interlocutory or other application that determines in whole or in part any substantive right in dispute between or among the parties by issuing a judgment and shall dispose of any other interlocutory or other application by issuing an order.

(2) A judgment shall be dated on the day it is signed and that day is the date of the pronouncement of the judgment.

(3) A judgment and the reasons relating thereto, if any, shall be deposited in the Registry at Ottawa and it shall be entered and filed there whereupon section 17.4 of the Act shall be complied with.

167. (1) Dans le cas d'un appel, d'une requête interlocutoire ou de toute autre demande ayant pour objet de statuer au fond, en tout ou en partie, sur un droit en litige entre les parties, la Cour rend un jugement et, dans le cas de toute autre demande ou requête interlocutoire, elle rend une ordonnance.

(2) Le jugement est daté du jour de la signature, qui constitue la date du prononcé du jugement.

(3) Le jugement et les motifs qui le fondent, le cas échéant, doivent être déposés au greffe à Ottawa; après le dépôt et l'inscription du jugement, les dispositions de l'article 17.4 de la Loi seront appliqués.

[6] The reference in subsection 167(3) of the *General Procedure Rules* to “section 17.4 of the Act” is a reference to section 17.4 of the *Tax Court of Canada Act*, R.S.C. 1985, c. T-2, which requires judgments to be mailed to each party. Section 17.4 reads as follows:

17.4 When the Court has rendered its judgment in a proceeding in respect of which this section applies, a copy of the judgment and any written reasons for it shall be sent to each party to the proceeding.

17.4 Dès que la Cour rend son jugement, une copie — y compris, le cas échéant, l'énoncé des motifs — est envoyée à chacune des parties.

[7] Although section 167 of the *General Procedure Rules* does not stipulate the time within which a signed judgment should be deposited in the registry and entered, the obvious implication is that those steps should occur immediately, which generally means the date of signing or, if that is impossible, then on the next business day. Similarly, the intention of section 17.4 of the *Tax Court of Canada Act* is that a copy of the signed judgment should be mailed as soon as possible.

[8] In this case, the judgment sought to be appealed was signed on August 29, 2008, which was a Thursday. There is no evidence as to when the judgment was deposited in the registry and entered, and no evidence as to whether Canada Trustco attempted to obtain that information. In the absence of any evidence to the contrary, it must be presumed that the judgment was deposited in the registry and entered on the day it was signed, August 29, 2008. It follows that August 29, 2008 marks the beginning of the appeal period referred to in paragraph 27(2)(b) of the *Federal Courts Act*. Therefore, I would conclude *prima facie* that when the notice of appeal was filed on October 8, 2008, the time for appealing had expired.

[9] Counsel for Canada Trustco says that its copy of the judgment bears a date stamp indicating that it was entered on September 8, 2008. Counsel is mistaken. The stamp to which he refers does not signify the date on which the judgment was entered. Rather, it signifies that on September 8, 2008, an officer of the registry of the Tax Court of Canada certified that the copy to which the stamp was affixed was a true copy of the original judgment filed of record in the registry.

[10] The stamp reads as follows:

I HEREBY CERTIFY that the above document is a true copy of the original filed of record in the registry of the Tax Court of Canada.

Je CERTIFIE que le document ci-dessus est une copie conforme à l'original déposé au greffe de la Court canadienne de l'impôt.

Dated / Fait le SEP 08 2008

[signed] Sophie Roy  
For the Registrar / Pour le Greffier  
SOPHIE ROY  
Receptionist and Operational Support Clerk /  
Réceptionniste et commis de soutien opérationnel

[11] Does it matter, for the purposes of determining the appeal deadline under paragraph 27(2)(b) of the *Federal Courts Act*, that the appellant did not receive a copy of the judgment until September 10, 2008? In my view, it does not. The evidence submitted by Canada Trustco indicates that 8 weekdays elapsed between the date of the judgment and the date on which counsel for Canada Trustco received a copy of the judgment by mail. There is no evidence to explain this fact, and no evidence that Canada Trustco attempted to obtain an explanation. It may be that the mailing did not occur immediately, or it may be that the mail itself was slow. However, for the purposes of determining the appeal deadline under paragraph 27(2)(b) of the *Federal Courts Act*, the date on which the judgment was mailed and the date on which the mailed copy was received are not relevant. As I read paragraph 27(2)(b), Parliament did not intend that the commencement of the appeal period would be determined on either basis (compare section 18.1 of the *Federal Courts Act*, which provides that the time for filing an application for judicial review of a decision is determined by reference to the date on which the decision is first communicated).

[12] Does it matter, for the purposes of determining the appeal deadline under paragraph 27(2)(b) of the *Federal Courts Act*, that the Crown received a copy of the judgment by email some days before Canada Trustco received its copy by mail? In my view, it does not. Again, there is no evidence to explain this fact, and no evidence that Canada Trustco attempted to obtain an explanation. It may be that the Registry should have sent Canada Trustco or its counsel a copy by email at the same time that it sent an email to the Crown, but perhaps that is not so. Perhaps counsel for Canada Trustco had not arranged to receive communications from the Tax Court by email. Perhaps an email communication was attempted but failed. In any event, as I read paragraph 27(2)(b) of the *Federal Courts Act*, the fact that parties may have received copies of the judgment at different times is not relevant to the determination of the appeal deadline set out in paragraph 27(2)(b) of the *Federal Courts Act*.

[13] For these reasons, I conclude that the notice of appeal was filed outside the time permitted by paragraph 27(2)(b) of the *Federal Courts Act*. The issue now is whether the time should be extended to permit this appeal to continue.

[14] In determining whether to grant an extension of time to appeal a judgment, all relevant circumstances must be considered. It is generally accepted that the most useful guide is found in the four questions posed in *Grewal v. Canada (Minister of Employment & Immigration)*, [1985] 2 F.C. 263 (F.C.A.): (1) Has there been a continuing intention to appeal? (2) Is there an arguable case on appeal? (3) Has the respondent been prejudiced by the delay? (4) Is there a reasonable explanation

for the delay? The weight to be given to each of these factors will vary with the circumstances of each case.

[15] The Crown concedes that the delay has not caused any prejudice and that all of the criteria for granting extension of time are met, except for Canada Trustco's explanation for the delay. The Crown relies particularly on the expression of the fourth question stated in *Karon Resources Inc. v. Canada* (1993), 71 F.T.R. 232, [1994] 1 C.T.C. 307 (F.C.T.D.), as quoted in *Pharmascience Inc. v. Canada (Minister of Health)*, 203 FCA 333 at paragraph 6, which refers to "special circumstances" justifying the delay. The Crown argues that there are no such special circumstances in this case.

[16] In my view, the expression of the fourth *Grewal* question adopted in *Karon Resources* and *Pharmascience* does not represent a change in the applicable principle. In this case, the explanation for the delay is counsel's misinterpretation of the date stamp. In my view, that is a reasonable explanation, particularly when it is considered in light of the very short duration of the delay. The extension of time will be granted.

[17] No costs will be awarded on this motion.

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"K. Sharlow"

J.A.



**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-511-08

**STYLE OF CAUSE:** Canada Trustco Mortgage Company  
v. Her Majesty the Queen

**MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES**

**REASONS FOR ORDER BY:** SHARLOW J.A.

**DATED:** December 4, 2008

**WRITTEN REPRESENTATIONS BY:**

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