

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20110722

Docket: A-183-10

Citation: 2011 FCA 231

CORAM: DAWSON J.A.

BETWEEN:

RALPH DONCASTER

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on July 22, 2011.

REASONS FOR ORDER BY:

DAWSON J.A.

Federal Court
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REASONS FOR ORDER

DAWSON J.A.

[1] Mr. Doncaster, the appellant, appeals from a decision of the Tax Court of Canada. The appeal has been perfected, and on June 30, 2011 Mr. Doncaster filed a requisition for hearing.

[2] However, on June 6, 2011 Mr. Doncaster also filed a motion in writing seeking an order that “the Respondent shall follow the timeline provided for by the rules or his case could be dismissed without further notice” (the timeliness motion). The affidavit filed in support of the timeliness motion explains that the motion is based upon the alleged failure of the respondent to serve a motion record upon Mr. Doncaster on a timely basis in November of 2010.

[3] Mr. Doncaster's timeliness motion precipitated the following:

- On June 9, 2011, the respondent filed her responding motion record. The record contained an affidavit (disputed affidavit) that dealt with the respondent's efforts to serve its responding record upon Mr. Doncaster in November of 2010.
- On June 15, 2011, Mr. Doncaster served a document upon the respondent entitled "Written Examination" that stated he had chosen to examine the respondent for discovery in writing. A schedule of questions was attached. All of the attached questions were directed to the affiant of the disputed affidavit.
- On June 20, 2011, the respondent advised that the questions would not be answered.
- On June 23, 2011, Mr. Doncaster served, but did not file, a motion record in which he moved in writing for an order that the respondent answer the written examination questions. He asserted his right to cross-examine the affiant upon the disputed affidavit.
- On July 4, 2011, the respondent attempted to file her response to the June 23, 2011, unfiled motion.
- On July 8, 2011, Mr. Doncaster attempted to file the June 23, 2011 motion.

[4] The time has now expired for Mr. Doncaster to file a reply to the responding submissions of the Crown to the timeliness motion, and no extension has been sought. The timeliness motion is now properly before the Court.

[5] The Registry has requested directions as to whether to accept for filing Mr. Doncaster's June 23, 2011 motion and the respondent's responding record. The Registry notes that a requisition for hearing has been filed and so there are no further documents to be filed.

[6] In my view, the parties have unnecessarily complicated and protracted Mr. Doncaster's timeliness motion. That motion must be put in its temporal context, which is as follows:

1. On April 4, 2011, the Administrator caused the appeal book to be filed.
2. On May 9, 2011, the respondent consented to a 15-day extension for the appellant to file his memorandum of fact and law.
3. On May 19, 2011, the appellant's memorandum of fact and law was filed.
4. On June 6, 2011, the timeliness motion was filed.
5. On June 20, 2011, the respondent's memorandum of fact and law was filed.
6. On June 30, 2011, the appellant filed a requisition for hearing.

[7] By the time the timeliness motion was put before the Court there was no step left for the respondent to take. There is no purpose to be served by the requested order. The timely filing of the respondent's memorandum of fact and law has rendered the timeliness motion hypothetical and moot. Moreover, the disputed affidavit is irrelevant. No purpose can be served in cross-examining

upon a document the Court will not rely upon and has not relied upon. The timeliness motion is moot regardless of what may have transpired in November of 2010.

[8] On a motion costs are generally awarded to the successful party. There is no reason to depart from that general principle.

[9] An order will therefore issue dismissing the timeliness motion with costs to the respondent. A direction will issue directing the Registry not to file the motion records relevant to Mr. Doncaster's request to cross-examine upon the disputed affidavit. The motion records shall not be filed because the motion to cross-examine is moot.

“Eleanor R. Dawson”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-183-10

STYLE OF CAUSE: RALPH DONCASTER v.
HER MAJESTY THE QUEEN

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: DAWSON J.A.

DATED: July 22, 2011

WRITTEN REPRESENTATIONS BY:

Ralph Doncaster FOR THE APPELLANT

Catherine M.G. McIntyre FOR THE RESPONDENT

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