

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20120820**

**Docket: 12-A-34**

**Citation: 2012 FCA 221**

**Present: MAINVILLE J.A.**

**BETWEEN:**

**PETER LEO-MENSAH**

**Applicant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on August 20, 2012.

**REASONS FOR ORDER BY:**

**MAINVILLE J.A.**



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**REASONS FOR ORDER**

**MAINVILLE J.A.**

[1] The applicant appealed to the Tax Court of Canada reassessments made under the *Income Tax Act*, R.S.C. 1985 (5<sup>th</sup> Supp.), c.1. for his 2004 and 2005 taxation years. These appeals were pursued under the informal procedure set out in sections 18 to 18.28 of the *Tax Court of Canada Act*, R.S.C. 1985, c. T-2.

[2] Though called to a hearing of the Tax Court of Canada held on November 1, 2011, the applicant failed to attend. Consequently, on November 15, 2011, Justice T.E. Margeson issued an order pursuant to subsection 18.21(1) of the *Tax Court of Canada Act* dismissing the appeals.

[3] While the applicant contacted the counsel for the respondent on November 2, 2011, stating that he had been unable to attend the hearing because he was ill, he did not apply to the Tax Court of Canada, under subsections 18.21(2) and (3) of the *Tax Court of Canada Act*, to have the order of dismissal set aside and the appeals set down for a hearing.

[4] On May 18, 2012, the Canada Revenue Agency (“CRA”) received a notice of objection form bearing the applicant’s name and address, and which set out the following cryptic request: “Appealing on disputed amount. Reinstated 2004 and 2005 dated on 25 April 2012 mailed date May 2, 2012” (*sic*). The CRA forwarded this document to the registry of the Federal Court of Appeal. A registry officer wrote to the applicant on June 5, 2012, providing him with general explanations concerning the procedure to appeal a decision of the Tax Court of Canada to this Court.

[5] On July 23, 2012, the applicant filed this motion in this Court. The motion does not set out the relief sought, nor does it contain any details. The respondent, however, filed a detailed motion record. I have reviewed the motion material provided to me by both the applicant and the respondent, and I take it from this material that the applicant is seeking an extension of time to either (a) file an application to set aside the dismissal of his appeals in the Tax Court of Canada, or (b) appeal these dismissals to this Court.

[6] In either case, the motion should be dismissed.

[7] An application under subsections 18.21 (2) and (3) of the *Tax Court of Canada Act* must be made to the Tax Court of Canada as soon as the circumstances allow, and in any event, not later

than 180 days after the challenged order was mailed to the appellant: paragraph 18.21(3)(b) of the *Tax Court of Canada Act*. This Court does not have the authority to grant such relief, and even if it did, the time to initiate such an application has now expired.

[8] An appeal to this Court from a final judgment of the Tax Court of Canada must be brought within 30 days of the pronouncement appealed from, or within any further time that a judge of this Court may allow: paragraph 27(2)(b) of the *Federal Courts Act*, R.S.C. 1985, c. F-7. The factors considered to grant such an extension of time are: (a) a continuing intention to appeal; (b) an arguable case on appeal; (c) the absence of prejudice on the respondent as a result of the delay; and (d) a reasonable explanation for the delay: *Canada Trustco Mortgage Co. v. Canada*, 2008 FCA 382, 382 N.R. 388, referring approvingly to *Grewal v. M.E.I.*, [1985] 2 F.C. 263, 63 N.R. 106 (C.A.).

[9] In this case, the applicant has provided no explanation justifying the eight month delay between the date his appeals were dismissed by the Tax Court of Canada and the filing of this motion for an extension of time. Litigants must demonstrate diligence in the pursuit of their appeals. This is particular so where, such as in this case, the applicant could have initiated an application pursuant to subsections 18.21 (2) and (3) of the *Tax Court of Canada Act*, but failed to do so in a timely manner. Without a cogent explanation justifying why this Court, at this late date, should now entertain an appeal of an order made under subsection 18.21(1) of the *Tax Court of Canada Act*, I must dismiss the motion.

[10] The motion shall consequently be dismissed.

"Robert M. Mainville"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** 12-A-34

**STYLE OF CAUSE:** PETER LEO-MENSAH v. HER  
MAJESTY THE QUEEN

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

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

**DATED:** August 20, 2012

**WRITTEN REPRESENTATIONS BY:**

Peter Leo-Mensah

SELF-REPRESENTED

Alexandra Humphrey  
Roxanne Wong

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Myles J. Kirvan  
Deputy Attorney General of Canada

FOR THE RESPONDENT