

BETWEEN:

ERROL BLACKWELL,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on December 7, 2015, at Toronto, Ontario
and written submissions filed thereafter.

Before: The Honourable Justice Patrick Boyle

Appearances:

Agent for the Appellant: Donald Garrison
Counsel for the Respondent: Rishma Bhimji

JUDGMENT

The Respondent's motion to have the appeal quashed is allowed pursuant to subsection 169(1) of the *Income Tax Act*.

Costs in this motion are payable by the Appellant to the Respondent in the amount of \$625 within 60 days. Agent for the Appellant has 30 days from the date hereof to file his written submissions with the Court as to why the Court should not be making a reimbursement Order against him in respect of all or a part of the \$625 costs award against his client.

Signed at Ottawa, Canada, this 20th day of June 2016.

“Patrick Boyle”

Boyle J.

Citation: 2016 TCC 155

Date: 20160620

Docket: 2015-406(IT)I

BETWEEN:

ERROL BLACKWELL,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Boyle J.

[1] The Appellant's 2008 taxation year was reassessed in August, 2010 to deny the carry-forward of a deduction from his 2007 participation in a Global Learning Gifts Initiative ("GLGI") program (the "First 2008 Reassessment").

[2] The Appellant filed an objection to his First 2008 Reassessment in timely fashion in September 2010.

[3] The Appellant's 2008 taxation year was reassessed again in January 2011 to deny a deduction from his 2008 participation in a GLGI program (the "Second 2008 Reassessment"). The Appellant's 2007 participation in GLGI was a different program and series of transactions from his 2008 participation in a GLGI program.

[4] The Appellant filed an appeal to this Court in January 2015. More than 90 days had passed since the Appellant's objection had been filed and the Minister of National Revenue (the "Minister") had not yet confirmed the Appellant's First 2008 Reassessment.

[5] The Notice of Appeal refers to both the 2007 carry-forward into 2008 from the Appellant's participation in the 2007 GLGI Program, and to his 2008 participation in the 2008 GLGI Program.

[6] The Respondent brought a motion to quash the appeal in Court on the basis that:

- 1) the Second 2008 Reassessment was never objected to, and had not been the subject of an application to extend nor could it be any longer, and
- 2) the Second 2008 Reassessment nullified the first 2008 reassessment.

[7] The Appellant's representative, Donald Garrison, argued that the Appellant never received the Second 2008 Reassessment. Mr. Garrison acknowledged in Court that the mailing address used by Canada Revenue Agency ("CRA") on the Second 2008 Reassessment was the Appellant's correct address (there had been some confusion at the hearing caused by the fact that Mr. Garrison used the wrong street address for the Appellant in his Notice of Appeal). The Respondent's affidavit satisfies me that the Second 2008 Reassessment was mailed by CRA to the Appellant. The *Income Tax Act* (the "Act") provides in subsection 248(7) that the Second 2008 Reassessment is deemed to have been received by the Appellant nonetheless. This is not a response to the Respondent's motion to quash.

[8] Subsection 165(7) of the *Act* provides as follows:

165. (7) Notice of objection not required - Where a taxpayer has served in accordance with this section a notice of objection to an assessment and thereafter the Minister reassesses the tax, interest, penalties or other amount in respect of which the notice of objection was served or makes an additional assessment in respect thereof and sends to the taxpayer a notice of the reassessment or of the additional assessment, as the case may be, the taxpayer may, without serving a notice of objection to the reassessment or additional assessment,

(a) appeal therefrom to the Tax Court of Canada in accordance with section 169; or

(b) amend any appeal to the Tax Court of Canada that has been instituted with respect to the assessment by joining thereto an appeal in respect of the reassessment or the additional assessment in such manner and on such terms, if any, as the Tax Court of Canada directs.

[9] The result of this subsection is that an objection to the Second 2008 Reassessment is not a precondition to filing an appeal with the Court, since the Appellant had validly objected to the First 2008 Reassessment.

Paragraph 165(7)(a) permits the Appellant to appeal from the Second 2008 Reassessment to this Court in accordance with section 169.

[10] Subsection 169(1) of the *Act* provides as follows:

169. (1) Appeal - Where a taxpayer has served notice of objection to an assessment under section 165, the taxpayer may appeal to the Tax Court of Canada to have the assessment vacated or varied after either

(a) the Minister has confirmed the assessment or reassessed, or

(b) 90 days have elapsed after service of the notice of objection and the Minister has not notified the taxpayer that the Minister has vacated or confirmed the assessment or reassessed,

but no appeal under this section may be instituted after the expiration of 90 days from the day notice has been sent to the taxpayer under section 165 that the Minister has confirmed the assessment or reassessed.

[11] In order to give effect to paragraph 165(7)(a) with respect to the Second 2008 Reassessment, it is necessary to read the references in subsection 169(1) to an assessment that has been objected to as a reference to the Appellant's First 2008 Reassessment.

[12] The closing phrase of subsection 169(1) provides that the right to appeal the Second 2008 Reassessment to the Court only continued for 90 days after the date of the Second 2008 Reassessment. The appeal was clearly filed several years after that. For that reason, the Respondent's motion is allowed and the appeal is quashed.

[13] Given the nature of the Appellant's response to the motion, and the performance of his representative at the hearing, I am fixing costs payable by the Appellant to the Respondent in the amount of \$625 within 60 days. The prompt and effective resolution of the appeal was delayed by Mr. Garrison's cavalier approach to the motion materials and its merits, as well as to the hearing itself.

[14] Given Mr. Garrison's performance at the hearing, including arriving almost an hour and a half late for the Monday hearing, knowing that he had not obtained the adjournment he first requested after business hours the previous Friday, that he chose to attend an examination for a Worship and Lifestyle course at World Impact Bible Institute notwithstanding he had not obtained an adjournment of the hearing,

that he did not inform his client that the hearing would be proceeding notwithstanding his adjournment request so that his client could attend, and that I described his explanations at the hearing as “less than fully truthful”, “misleading”, and “fundamentally dishonest”. At the hearing, I told Mr. Garrison twice that I would be considering ordering him to personally reimburse his client, Mr. Blackwell, for all or a portion of any costs award against his client. Mr. Garrison has 30 days from the date hereof to file his written submissions with the Court as to why the Court should not be making such a reimbursement order against him in respect of all or a part of the \$625 costs award against his client.

Signed at Ottawa, Canada, this 20th day of June 2016.

“Patrick Boyle”

Boyle J.

CITATION: 2016 TCC 155

COURT FILE NO.: 2015-406(IT)I

STYLE OF CAUSE: ERROL BLACKWELL AND HER
MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: December 7, 2015 and written materials
filed thereafter.

REASONS FOR JUDGMENT BY: The Honourable Justice Patrick Boyle

DATE OF JUDGMENT: June 20, 2016

APPEARANCES:

Agent for the Appellant: Donald Garrison
Counsel for the Respondent: Rishma Bhimji

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:

William F. Pentney
Deputy Attorney General of Canada
Ottawa, Canada