

Docket: 2004-2814(IT)APP

BETWEEN:

ISABELLE MALINOWSKI,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Application heard on September 3, 2004, at Montréal, Quebec.

Before: The Honourable Justice Pierre Archambault

Appearances:

Agent for the Applicant: Ricardo Hrtschan

Counsel for the Respondent: Antonia Paraherakis

ORDER

Upon application involving a question of law and for an order extending the time within which a Notice of Objection to the assessments made under the *Income Tax Act* for the 1991, 1992, 1993, 1994 and 1995 taxation years may be served;

The application is dismissed, without costs, in accordance with the attached Reasons for Order.

Signed at Ottawa, Canada, this 25th day of November 2004.

“Pierre Archambault”

Archambault J.

Translation certified true
on this 6th day of April 2009.
Daniela Possamai, Translator

Citation: 2004TCC710
Date: 20041125
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ISABELLE MALINOWSKI,

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And

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REASONS FOR ORDER

Archambault J.

[1] In her application for determination of a question of law and Notice of Appeal, Ms. Malinowski is asking this Court to offset the tax liability consisting in what was said to be her tax arrears for the taxation years 1991 to 1995 inclusive. In the alternative, she is asking the Court to extend the time for serving a notice of objection. The application was treated by the Tax Court of Canada as a simple application for an extension of time.

[2] At the beginning of the hearing, counsel for the Respondent adduced in evidence a computer-generated reconstruction of Notices of Assessment which demonstrate that the Minister of National Revenue (**Minister**) issued a Notice of Assessment dated June 29, 1992, for the year 1991, dated April 22, 1993, for the year 1992, dated November 10, 1994, for the year 1993, dated December 4, 1995, for the year 1994, and dated April 1, 1996, for the year 1995. The agent for Ms. Malinowski, that is, her husband, was unable to deny or confirm that the Notices of Assessment were issued on those dates. Furthermore, he acknowledged that there was no evidence to present in that regard. He was also unable to say whether Notices of Objection had been filed against the assessments and also acknowledged that he was unable to adduce any evidence in this regard.

[3] In fact, no evidence was presented by the agent, except for the documents filed as Exhibit A-1, namely the letters exchanged between Ms. Malinowski and the Minister. None of those documents contain any Notices of Assessment.

[4] In his oral submissions, the agent for Ms. Malinowski acknowledged that on the back of the Notices of Assessment the Minister sends to taxpayers there is a description of how to appeal against assessments. It should be added that in her application for determination of a question of law, Ms. Malinowski acknowledges that she did not reply to the Notice of Assessment received in 1996, requiring that she pay \$2,999.31 plus \$58.56 in interest, as she was a student and her income was non-existent. Furthermore, she acknowledged that she had little or no communication with the Minister in the years following the spring of 1996. She also stated, at paragraph 9 of her application, that in December 2001, she received a demand letter requiring her to pay \$4,707.31 in tax arrears.

Analysis

[5] The relevant provision for determining whether Ms. Malinowski was entitled to an extension of time is paragraph 166.1(7)(a) of the *Income Tax Act* (Act), which provides that, in order to be recognized, an application for an extension of time must be made within one year after the expiration of the time otherwise limited by the Act for serving a notice of objection. According to 165(1)(a) of the Act, a taxpayer must serve a notice of objection on or before the later of (i) the day that is 90 days after the day of mailing of the notice of assessment; and (ii) the day that is one year after the taxpayer's filing-due date for the year.¹ As for Ms. Malinowski, the prescribed time for filing her Notice of Objection for the relevant periods was as follows: for 1991, April 30, 1993; for 1992, April 30, 1994; for 1993, April 30, 1995; for 1994, April 30, 1996; and, for 1995, April 30, 1997. It is clear from the evidence that this Court does not have the jurisdiction to extend the time within which to file a Notice of Objection, on the basis that Ms. Malinowski did not comply with the time limits prescribed by the Act. Accordingly, since Ms. Malinowski cannot file a Notice of Objection, it follows that this Court does not have the jurisdiction to hear an objection to her tax assessments for the 1991 to 1995 taxation years either.

[6] The agent for Ms. Malinowski argues that the reason is that the Ministère is statute-barred from collecting the outstanding taxes of Ms. Malinowski. In my

¹ According to subsection 248(1) and paragraph 150(1)(d)(i) of the Act, the day is April 30 for an individual such as Ms. Malinowski.

view, this Court does not have jurisdiction to hear a similar objection. The only jurisdiction this Court has is that given to it by statute. No provision was brought to my attention which grants this Court the statutory right to declare statute-barred the right to recover the amount owing by Ms. Malinowski to the Minister.

[7] During the hearing, I asked counsel to provide me with written submissions on the issue. The state of the law is, in my view, effectively reflected in the following two relevant paragraphs:

[TRANSLATION]

...

The Tax Court of Canada has jurisdiction to vacate or vary assessments issued by the Minister of National Revenue under section 169 of the *Income Tax Act* (“ITA”). However, it does not have the jurisdiction to decide debt collection and limitation issues. In fact, section 222² ITA provides that all taxes, interest, penalties, costs and other amounts payable under this Act are debts due to Her Majesty and recoverable as such in the Federal Court.

Moreover, the decision of the Federal Court of Appeal in *Gertrud Neuhaus v. Her Majesty the Queen*, 2003 DTC 5469, in turn sets out that in collection matters, the Act gives the Federal Court jurisdiction to decide disputes.

[8] For all these reasons, the application for an extension of time is dismissed, without costs.

² This section states as follows:

All taxes, interest, penalties, costs and other amounts payable under this Act are debts due to Her Majesty and recoverable as such in the **Federal Court**

Signed at Ottawa, Canada, this 25th day of November 2004.

“Pierre Archambault”

Archambault J.

Translation certified true

on this 6th day of April 2009.

Daniela Possamai, Translator

CITATION: 2004TCC710

COURT FILE NO.: 2004-2814(IT)APP

STYLE OF CAUSE: Isabelle Malinowski and The Queen

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: September 3, 2004

REASONS FOR ORDER BY: The Honourable Justice Pierre Archambault

DATE OF ORDER: November 25, 2004

APPEARANCES:

For the Applicant: Ricardo Hrtschan (Agent)

For the Respondent: Antonia Paraherakis

COUNSEL OF RECORD:

For the Applicant:

Name:

Firm:

For the Respondent: John H. Sims, Q.C.
Deputy Attorney General of Canada
Ottawa, Canada