

Dockets: 2004-4325(IT)G
2004-4324(GST)G

BETWEEN:

EDWINA CYR,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Motion heard by telephone conference call on October 13, 2006
at Ottawa, Ontario.

Before: The Honourable Justice François Angers

Appearances:

For the Appellant: The Appellant herself

Counsel for the Respondent: Carole Benoît

ORDER

The Respondent's motion is granted in part with costs, in accordance with the attached Reasons for Order.

Signed at Ottawa, Ontario, this 16th day of November 2006.

Angers J.

Translation certified true
on this 20th day of February 2008.

François Brunet, Revisor

Citation: 2006TCC567
Date: 20061116
Dockets: 2004-4325(IT)G
2004-4324(GST)G

BETWEEN:

EDWINA CYR,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR ORDER

Angers J.

[1] This is a motion filed by the Respondent to have the two above-mentioned appeals dismissed for delay, under section 64 of the *Tax Court of Canada Rules (General Procedure)* (the “Rules”), due to the Appellant’s failure to prosecute the appeals with due dispatch and, in the alternative, due to the Appellant’s failure to meet the undertakings made at the examination for discovery, under section 110 of the Rules. Also, in the alternative, the Respondent is requesting an order peremptorily setting the date for compliance with undertakings arising from the examination for discovery that took place on April 4, 2006, and the costs associated with this motion.

[2] In support of her motion, the Respondent has filed three affidavits, including two sworn by Dorena Gillis on August 17 and September 7, 2006, and one by Guy Savoie on October 10, 2006. The Appellant has not filed any affidavits in response to this motion. The motion was to be heard on September 11, 2006, but the Appellant did not appear on that date. The Court decided en officio to adjourn the motion until October 13, 2006, and to proceed by telephone conference call. An order to this effect was made, as well as an order setting at October 13, 2006, the date by which the Appellant had to meet her undertakings.

[3] The two Notices of Appeal in this case are dated June 14, 2005.

[4] The Appellant, who was then represented by counsel, and the Respondent agreed on December 7, 2005, that the examinations for discovery would take place on January 31 and February 1, 2006, at the office of the Appellant's counsel in Grand Falls, New Brunswick.

[5] Shortly after, i.e. December 23, 2005, the chief justice of the Tax Court of Canada made an order in docket 2004-4325(IT)G setting dates for the production of lists of documents, the examinations for discovery and the compliance with undertakings arising from the examinations for discovery for January 15, 2006, February 1, 2006, and March 1, 2006, respectively. Following this order, the Appellant filed and served her list of documents for the two appeals on January 11, 2006, and the Respondent did so on January 16, 2006. Concerning docket 2004-4324(GST)G, Justice Paris of this Court made an order setting dates for the examinations for discovery and the compliance with undertakings arising from the examinations for discovery for the same dates as those set in the chief justice's order of December 23, 2005.

[6] The evidence reveals that on January 25, 2006, i.e. six days before the examination for discovery, the Appellant's counsel notified the Respondent that he was no longer representing her. It was therefore impossible to hold the examination for discovery on the set date and, thereafter, to comply with the orders of the Court. The Respondent's counsel therefore filed and served, on February 28, 2006, a written motion for an extension of time, pursuant to Practice Note No. 14. The Appellant did not respond to the Respondent's motion within the time prescribed by subsection 69(3) of the Rules. Counsel for the Respondent therefore wrote to the Court on March 2 asking it to allow its motion and asking that the dates suggested in the Notice of Motion be postponed by 30 days.

[7] On March 16, 2006, Chief Justice Bowman therefore made a new order in each of the appeals in issue, setting dates for the examinations for discovery and the compliance with undertakings for April 18, 2006, and May 15, 2006, respectively, at the latest.

[8] On March 23, 2006, Counsel for the Respondent served the Appellant a notice to appear at an examination for discovery to take place on April 4, 2006. The Appellant did appear and the examination took place.

[9] On April 24, 2006, counsel for the Respondent sent the Appellant, by mail, a list of 26 undertakings made by the Appellant arising from the examination for discovery. The Appellant's answers to undertakings were not received as of May 15, 2006, the date set by order of this Court of March 16, 2006.

[10] By letter dated May 17, 2006, counsel for the Respondent notified the Appellant that she was in breach of the Court's order and that if the undertakings were not complied with by May 31, 2006, at the latest, the Respondent would move to dismiss the appeal. The Appellant sent counsel for the Respondent, by letter dated June 1, 2006, and received on June 5, 2006, her answers to the undertakings. Most of the undertakings made by the Appellant were met, except for ten; in seven cases, the Appellant said she could not answer because she did not have her documents in her possession. She explained at the hearing of this motion that her counsel still had her file, because she could not afford to pay his fees, and therefore she did not have her file. Concerning the undertakings to obtain information, the information was not supplied to the Respondent by the date of hearing of this motion. Nor did the Appellant try to contact the Respondent in any way.

[11] The Respondent therefore asked the Court, by letter of June 15, 2006, to hold a case management conference for the two appeals. In order to set a date for the case management conference, the Court's hearings coordinator tried to reach the Appellant on June 20, 23 and 26, 2006, and on August 9, 2006, but to no avail.

[12] On August 10, 2006, the Appellant, through her accountant, Michel Dumont, had a letter sent to the Court's hearings coordinator informing her that the Appellant agreed to hold a case management conference. In this letter, Mr. Dumont informed the hearings coordinator that he had obtained certain documents from the Caisse populaire account for the period from January 1, 2002, to December 31, 2005, and that the accounting would be complete in the following weeks. He informed the coordinator that the employees' vacations took place in July and August and that he would be out of the country from September 6 to 25, 2006. He informed the coordinator that they would be available, and I assume he was referring to the Appellant and himself, starting in October. A copy of this letter was not sent to the Respondent, and it was the coordinator who sent a copy of this letter to counsel for the Respondent on August 15, 2006.

[13] On the date scheduled for this hearing, September 11, 2006, the Appellant did not appear. Nor did she provide any reason or excuse for not appearing, except that in the hearing by telephone conference call, she explained that her state of

health had prevented her from appearing before the Court on that date. She had not taken possession of her file from counsel and she could not say when she would be able to meet her undertakings as specified in the letter sent by the accountant to the hearings coordinator.

[14] In support of her motion, the Respondent also filed an affidavit from Guy Savoie, an auditor at the Canada Revenue Agency in Bathurst, New Brunswick. In this affidavit, Mr. Savoie explained the difficulties encountered during the audit of the files of Mrs. Cyr and her spouse. The affidavit explained how it was difficult to reach the Appellant and obtain information from her. It reported the missed meetings and the refusal by the Appellant and her spouse to answer and to produce documentation supporting their claims. The poor excuses advanced and their lack of cooperation in the entire audit process were very obvious.

[15] When she made her submissions, the Appellant did not seem to understand the gravity of her action and its potential consequences. She based her argument on the fact that an assessment of her had already been vacated, and she didn't understand why she was subject to those that were being appealed from. This assertion was indeed confirmed by Guy Savoie in his affidavit. He added that this vacated assessment was at the origin of the one issued in this case under section 160 of the *Income Tax Act*.

[16] The issue in these two appeals is whether the Appellant is jointly and severally liable for her spouse's tax debts following the transfer of his property to the Appellant while he was indebted to the Minister of National Revenue. That is the part that the Appellant does not seem to understand.

[17] There is no doubt, in my opinion, that the Appellant's attitude towards the management of her appeals is more based on her belief that she does not owe the Receiver General due to her vacated assessment rather than on an intention to unduly delay proceedings before this Court. It is true that she did not comply with the orders of this Court setting time limits, but it must be acknowledged that she nevertheless attended the examination for discovery and complied with a good part of the undertakings she had made.

[18] She asked an accountant to garner the documentation in question in order to meet her undertakings and she did not have her file at hand to complete them. The time passed since she made her undertakings should have been sufficient to allow the Appellant to meet her last undertakings or to inform the Respondent that it was

impossible for her to do so. The Appellant gives an appearance of goodwill that is concealed in large part by her lack of cooperation and, in particular, of communication, as much with the Respondent as with the Court.

[19] It is worthwhile to remind the Appellant that she is responsible for the prosecution of her appeals. She must do it in compliance with the Rules and the orders of this Court. She has a duty to take possession of her file, to meet the undertakings she has made and to comply with the orders of this Court. In case of non-compliance with the Rules or an order of this Court there must be reasonable grounds.

[20] The efforts made by the Appellant and her misunderstanding of the process are in her favour. However, I cannot ignore the inconveniences and expenses caused by the Appellant's inaction. I therefore order that the Appellant meet her undertakings within 20 days following reception of these reasons or that she explain to the Respondent why it is impossible to do so.

[21] The parties must communicate in writing with the hearings coordinator by December 20, 2006, at the latest in order to file a joint application to set a date and a place for the hearing in accordance with section 123 of the Rules.

[22] As the motion is granted in part, the Respondent is awarded costs in the fixed amount of \$1,500. This amount will have to be paid before December 20, 2006, failing which the Respondent may inform the hearings coordinator and ask that the appeals be dismissed.

Signed at Ottawa, Ontario, this 16th day of November 2006.

“François Angers”

Angers J.

Translation certified true
on this 20th day of February 2008.

François Brunet, Revisor

CITATION: 2006TCC567
COURT FILE NO.: 2004-4325(IT)G
STYLE OF CAUSE: Edwina Cyr and the Queen
PLACE OF HEARING: Ottawa, Ontario
DATE OF HEARING: October 13, 2006
REASONS FOR ORDER BY: The Honourable Justice François Angers
DATE OF ORDER: November 16, 2006

APPEARANCES:

For the Appellant: The Appellant herself
Counsel for the Respondent: Carole Benoît

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:

John H. Sims, Q.C.
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