

Docket: 2006-1322(IT)G

BETWEEN:

1314420 ONTARIO LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion heard on August 2, 2006 at Welland, Ontario

Before: The Honourable Justice G. Sheridan

Appearances:

For the Appellant:

No one appeared

Counsel for the Respondent:

George Boyd Aitken

ORDER

Upon motion by the Respondent for an Order pursuant to paragraph 58(1)(b) of the *Tax Court of Canada Rules (General Procedure)* to strike out the Notice of Appeal for the 2000 taxation year;

And having heard the submissions of counsel for the Respondent and having read the materials filed;

And upon no one having appeared, nor any materials having been filed on behalf of the Appellant;

IT IS ORDERED:

1. pursuant to subsection 30(2) of the *Tax Court of Canada Rules (General Procedure)*, the Appellant shall have 30 days from the date of this order to retain counsel and to notify the Court and counsel for the Respondent

in writing of the name and address for service of its counsel, together with telephone and fax numbers; or alternatively, within 15 days of the date of this order, to seek leave of the Court to be represented by one of its officers, such motion to be brought before me on a peremptory basis;

2. in the event of the Appellant's failure to comply with the terms of this order, the Respondent may renew its motion for the alternative relief sought, such motion to be brought back before me on a peremptory basis; and
3. the Appellant shall pay to the Respondent its costs of this motion, in any event of the cause

in accordance with the attached Reasons for Order.

Signed at Ottawa, Canada, this 6th day of September, 2006.

"G. Sheridan"

Sheridan, J.

Citation: 2006TCC490
Date: 20060906
Docket: 2006-1322(IT)G

BETWEEN:

1314420 ONTARIO LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Sheridan, J.

[1] The Respondent's Motion Record sets out the orders sought and the grounds relied upon as follows:

The motion is for:

- (a) an Order striking out the Notice of Appeal, filed with the Tax Court of Canada on February 1, 2006, pursuant to paragraph 58(1)(b) of the *Tax Court of Canada Rules (General Procedure)*;
- (b) in the alternative, an Order requiring the Appellant to deliver particulars within a specified time pursuant to section 52 of the *Tax Court of Canada Rules (General Procedure)*;
- (c) in the alternative, an Order pursuant to section 26 of the *Tax Court of Canada Rules (General Procedure)* consolidating the present appeal with the appeal filed by the Appellant in Tax Court File Number 2006-1323(IT)I;
- (d) in the further alternative, an Order extending the time allowed for the Respondent to file its Reply to the Notice of Appeal pursuant to paragraph 44(1)(b) of the *Tax Court of Canada Rules (General Procedure)*;

- (e) an Order requiring the Appellant to comply with subsection 30(2) of the *Tax Court of Canada Rules (General Procedure)*; and thereby be represented by counsel or seek leave of the Court to be represented by an officer of the Appellant;
- (f) costs in any event of the cause; and
- (g) such further and other relief as this Honourable Court deems just.

The grounds for the Motion are:

- (a) the Notice of Appeal discloses no reasonable grounds for appeal as, at best, it raises a decided question of law under subsection 152(7) of the *Income Tax Act*;
- (b) the Appellant has failed to supply particulars to the Respondent in spite of the Respondent's Demand for Particulars which Demand for Particulars was served on the Appellant on June 30, 2006;
- (c) the Notice of Appeal as filed does not provide sufficient particulars upon which the Respondent may rely in order to prepare its Reply to the Notice of Appeal; and
- (d) the present appeal and the appeal filed by the Appellant in Tax Court File Number 2006-1323(IT)I disclose common questions of fact and law. It would be reasonable in the circumstances that the matters be consolidated or heard together on common evidence.

[2] This motion was set down for hearing at Welland, Ontario on August 2, 2006. On August 1, 2006, prior to the hearing of another matter, counsel for the Respondent advised the Court that it was his understanding the Appellant would be seeking an adjournment, apparently because of certain health problems being experienced by the Appellant's accountant, Mr. Bill Haskin, the individual who (again, apparently) was to represent the Appellant at the hearing of the Respondent's motion. Upon further questioning from the Court, counsel for the Respondent further advised that he was not aware of any formal request for adjournment having been made to the Court.

[3] As counsel for the Respondent anticipated further communication with Mr. Haskin later in the day, he was instructed by the Court to inform him that if he

planned to seek an adjournment of the motion set for the following day, he was required to make such a request in writing together with proof of the medical appointment (apparently) preventing him from attending on behalf of the Appellant on August 2, 2006. After a short recess, counsel for the Respondent informed the Court that he had spoken to Mr. Haskin who had advised he would "try" to get the necessary document to Ottawa and confirmed that Mr. Bobby Cosby¹ was "not available" on August 2, 2006. Although initially not opposed to the Appellant's apparent request for an adjournment if supported by proof in writing of medical problems affecting Mr. Haskin's ability to appear, as the day wore on, counsel for the Respondent took the position that the Respondent would prefer to proceed with the motion as scheduled.

[4] On August 2, 2006, the Respondent's motion was called for hearing. No one appeared for the Appellant. Giving the Appellant the benefit of the doubt, the Court placed the Respondent's motion at the end of the day's list. Before calling the case for a second time following the completion of all other matters, a recess was called and it was verified that nothing had been received from the Appellant at the Registry office in Ottawa. Accordingly, the Respondent's motion was heard in the Appellant's absence².

[5] After reviewing the deficiencies in the drafting of the Notice of Appeal and in the Appellant's response to the Respondent's Demand for Particulars, counsel for the Respondent submitted that the Minister was justified in seeking to have the Notice of Appeal struck out under paragraph 58(1)(b) of the *Tax Court of Canada Rules (General Procedure)*. Paragraph 58(1)(b) reads:

...

- (b) to strike out a pleading because it discloses no reasonable grounds for appeal or for opposing the appeal,

¹ According to the Notice of Appeal, president of the Appellant.

² As it turned out, a fax from Mr. Haskins was received at the Court Registry in Ottawa shortly after 9:00 o'clock on the morning of the hearing but did not make its way into the hands of the registry official and thence, to mine in Welland until after the Respondent's motion had been heard and Court had adjourned for the day. Even had I received it before 9:30, given the behaviour of Mr. Haskin and Mr. Cosby and the insufficiency of the material faxed to the Registry, I would not have granted what purported to be the Appellant's request for an adjournment.

[6] He noted as well that the Appellant's lack of representation by counsel was in breach of subsection 30(2) of the *Tax Court of Canada Rules (General Procedure)*. Subsection 30(2) reads:

Representation of Person or Corporation by Counsel

...

(2) A corporation shall be represented by counsel in all proceedings in the Court, unless the Court, in special circumstances, grants leave to the corporation to be represented by an officer of the corporation.

[7] Recognizing the principle that justice is better served by the taxpayer having its day in Court and positing that the Appellant's lack of legal representation might account for the state of its pleadings, counsel for the Respondent suggested that an order compelling the Appellant to comply with subsection 30(2) might result in remedying many of the deficiencies addressed in the Respondent's motion. I am persuaded by counsel's imminently fair proposal, one which is in keeping with the approach set out in the case law:

The governing test for dismissing an action or striking out a claim as disclosing no reasonable cause of action is a difficult one to meet. Our Courts are rightly reluctant to snuff out potentially meritorious actions prematurely. We try to err on the side of giving each person a day in court, striking out claims only in the plainest and most obvious cases. As Mr. Justice Estey wrote for the Supreme Court of Canada in *Canada (Attorney General) v. Inuit Tapirisat of Canada et al.*, [1980] 2 S.C.R. 735 at page 740:

On a motion such as this a court should, of course, dismiss the action or strike out any claim made by the plaintiff only in plain and obvious cases and where the court is satisfied that "the case is beyond doubt". [Emphasis added.]³

[8] There is nothing in these words, however, to relieve the Appellant of its obligations to prosecute its appeal in a timely and responsible manner in accordance with the *Tax Court of Canada Rules (General Procedure)*. And there is certainly nothing entitling the Appellant to disregard an order of this Court setting the Respondent's motion down for hearing. The inattention and inaction of those purporting to represent the Appellant, Mr. Haskin and Mr. Cosby, wasted the time and/or resources of the Court, counsel for the Respondent and the taxpayers of

³ *Roach v. Canada (Minister of State for Multicultural and Citizenship)*, 1994 2 F.C. 406 at paragraph 29 (F.C.A.).

Canada. Accordingly, the Appellant shall pay to the Respondent its costs of this motion, in any event of the cause.

[9] Accordingly, it is ordered that:

1. pursuant to subsection 30(2) of the *Tax Court of Canada Rules (General Procedure)*, the Appellant shall have 30 days from the date of this order to retain counsel and to notify the Court and counsel for the Respondent in writing of the name and address for service of its counsel, together with telephone and fax numbers; or alternatively, within 15 days of the date of this order, to seek leave of the Court to be represented by one of its officers, such motion to be brought before me on a preemptory basis;
2. in the event of the Appellant's failure to comply with the terms of this order, the Respondent may renew its motion for the alternative relief sought, such motion to be brought back before me on a preemptory basis; and
3. the Appellant shall pay to the Respondent its costs of this motion, in any event of the cause

Signed at Ottawa, Canada, this 6th day of September, 2006.

"G. Sheridan"

Sheridan, J.

CITATION: 2006TCC490

COURT FILE NO.: 2006-1322(IT)G

STYLE OF CAUSE: 1314420 ONTARIO LTD. AND HER
MAJESTY THE QUEEN

PLACE OF HEARING: Welland, Ontario

DATE OF HEARING: August 2, 2006

REASONS FOR ORDER BY: The Honourable Justice G. Sheridan

DATE OF ORDER: September 6, 2006

APPEARANCES:

For the Appellant: No one appeared

Counsel for the Respondent: George Boyd Aitken

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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