

Docket: 2007-4610(IT)APP

BETWEEN:

CLAUDE H. SAUVAGEAU,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Application for extension of time heard on February 6, 2008,
at Sherbrooke, Quebec.

Before: The Honourable Justice Paul Bédard

Appearances

For the Applicant: The Applicant himself
Counsel for the Respondent: Chantal Roberge

JUDGMENT

The application for an extension of time to appeal pursuant to the *Income Tax Act* in respect of taxation years 1997 through 2006 is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 14th day of April 2008.

"Paul Bédard"

Bédard J.

Translation certified true
on this 26th day of May 2008.
Carole Chamberlin, Translator

Citation: 2008TCC166
Date: 20080414
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REASONS FOR JUDGMENT

Bédard J.

[1] An application was made for an extension of time to appeal pursuant to section 167 of the *Income Tax Act* (the "Act") in regard to the 1997 through 2006 taxation years.

2006 taxation year

[2] Claude H. Sauvageau (the "Appellant")* served on the Minister of National Revenue (the "Minister") a notice of objection to an assessment made on May 10, 2007. On November 30, 2007, the Minister confirmed the assessment of May 10, 2007.

[3] In the Court's view, the application for an extension was quite simply moot at the hearing, as the Appellant was within the time frame provided for by the Act to appeal from the assessment made on May 10, 2007.

* Translator's note: Sic. The parties in this matter are the "Applicant" and the "Respondent".

2004 and 2005 taxation years

[4] On December 28, 2005, the Minister sent the Appellant a notice of reassessment for the 2004 taxation year. On June 5, 2006, the Minister sent the Appellant a notice of assessment for the 2005 taxation year. On or around March 30, 2006, for the 2004 taxation year and July 15, 2006, for the 2005 taxation year, the Appellant served on the Minister a notice of objection to the reassessment of December 28, 2005, and the assessment of June 5, 2006. On August 9, 2006, the Minister notified the Appellant by registered mail that the reassessment dated December 28, 2005, for the 2004 taxation year and the assessment dated June 7, 2006, for the 2005 taxation year had been confirmed.

[5] On September 18, 2006, the Appellant sent the Court a letter, the pertinent portion of which reads:

[TRANSLATION]

To whom it may concern:

Appeal to the Tax Court of Canada regarding the interpretation of an application for a settlement agreement and the proper, fair and reasonable treatment of income tax and benefit returns for the 1997 to 2005 taxation years...

[6] On October 28, 2006, Donald Ringuette, a Court Registry officer, sent the Appellant a letter, the pertinent portion of which reads:

[TRANSLATION]

This is to acknowledge receipt of your letter concerning the notice of appeal and to follow up on my telephone call of this past October 16. Upon examining the information you provided, we have noted that some essential information is missing.

According to the *Tax Court of Canada Rules of Practice and Procedure* (IT, GST, EI, etc.), some basic information is required in order for your notice of appeal to be filed and the matter heard. We therefore ask that you provide the following information:

- the procedure chosen (informal or general)
- the filing fee (applicable judicial fee)
- the facts and the grounds for the appeal

Please send this information within 30 days of the date of this letter. Otherwise, we will not be able to open a file and it will not be possible for your appeal to be heard.

Enclosed, for your information, is a pamphlet about income tax appeals that you can adapt to fit your circumstances and return to us as soon as possible.

[...]

[7] On October 11, 2007 (approximately 11 months after receipt of the letter of October 28, 2006), the Appellant sent the Court a notice of appeal in regard in particular to the 2004 and 2005 taxation years (notice of appeal of October 11, 2007).

[8] In a letter dated October 12, 2007, the Court Registry advised the Appellant that he was out of time for filing an appeal. The deadline for filing an appeal in this case was November 7, 2006. In that same letter, the Appellant was advised that he was nonetheless within the time frame provided for under the Act for applying to the Court for an extension of time to appeal. The deadline for filing such an application in this case was November 7, 2007.

[9] On November 6, 2007, the Appellant sent the application for an extension of time to appeal, by registered mail.

[10] There were two issues in this case:

- (a) whether the Appellant made the application for an extension as soon as possible or as soon as circumstances permitted
- (b) whether there were reasonable grounds for appealing

[11] In regard to the first issue, the Appellant testified that, during the period from October 1, 2006, to September 30, 2007, he had had back problems that had prevented him from making such an application for an extension. The Appellant maintained that he had made his application for an extension as soon as possible under the circumstances, that is, when his health had permitted.

[12] The Appellant's evidence regarding his health was based on his testimony, which was not supported by any sound documentary evidence or credible independent testimony. The Appellant could not hope to satisfy the Court that he had been unable to act by making statements that not only were vague and imprecise, but also conflicted with documents he himself had filed. The Appellant's testimony in

this case as to the nature of his back problems was vague and imprecise to say the least and made no mention of the nature of the treatment and care he had received or of any medication he had been prescribed. The Appellant's testimony as to his alleged complete inability to tend to his tax matters or even direct a third party to do so for him is contradicted by his notice of appeal of October 11, 2007, in which, the Court notes, the Appellant indicated having contacted the Court Registry at least three times in November 2006—in other words, during the alleged period of incapacity.

[13] Finally, the Court emphasizes that, according to the Appellant's own testimony, his alleged incapacity ended in late September 2007. There was consequently nothing to stop the Appellant from making such an application for an extension at that point, yet the Appellant filed his application for an extension more than five weeks after the end of his alleged period of incapacity, which in the Court's view is much too long a period of time under the circumstances.

[14] Although there is no need to address the second issue, given the Court's conclusion that the Appellant did not make his application for an extension as soon as possible, it is the Court's view that the application could also be dismissed on the basis that the Appellant failed to demonstrate that there were reasonable grounds for his appeal. In fact, the Appellant's testimony concerning the grounds for his appeal is barely comprehensible. The Court is of the view that the issues raised and remedies sought for the 2004 and 2005 taxation years were already analyzed by the Court in a decision¹ against the Appellant rendered by Mr. Justice Archambault. In the matter heard by Archambault J., the Appellant sought in particular to deduct from his employment income a "failure to earn" amount, that is, an amount that he would have received if his duties had been those of an inspector and he had visited the different construction sites under the jurisdiction of the Commission de la construction du Québec. The Court has the impression that the Appellant was indirectly attempting to deduct from his income the same shortfall he indicated had created losses that could be carried forward.

2000, 2001, 2002 and 2003 taxation years

[15] With respect to the 2000 through 2003 taxation years, the application for an extension of time to appeal must be dismissed quite simply because the right to appeal assessments relating to those taxation years never arose, since the Appellant never served a notice of objection to the assessments for those taxation years. Subsection 169(1) of the Act requires a taxpayer to serve a notice of objection in

¹ *Claude H. Sauvageau v. R.*, docket 1999-3505(IT)I.

order to be able to appeal from an assessment. In other words, serving a notice is a prerequisite to making an appeal.

1998 and 1999 taxation years

[16] With regard to the 1998 and 1999 taxation years, the application for an extension of time to appeal must be dismissed quite simply because an appeal was already made to the Court from the assessments in respect of those taxation years, and that appeal was dismissed by the Court on January 14, 2004.² *Res judicata* thus applies here.

1997 taxation year

[17] With regard to the 1997 taxation year, the application for an extension of time to appeal must be dismissed quite simply because an appeal was already made to the Court from the assessment in respect of that year, and that appeal was dismissed by the Court on January 23, 2001.³ The Court emphasizes that the judgment of January 23, 2001, was upheld by the Federal Court of Appeal⁴ on April 15, 2002. *Res judicata* thus applies here.

[18] For all of these reasons, the application for an extension of time to appeal in regard to the 1997 through 2006 taxation years is dismissed.

² *Claude H. Sauvageau v. R.*, docket 2001-260(IT)I.

³ *Claude H. Sauvageau v. R.*, docket 1999-3505(IT)I.

⁴ *Claude H. Sauvageau v. M.N.R. et al.*, 2002 FCA 136, docket A-526-00.

Signed at Ottawa, Canada, this 14th day of April 2008.

Bédard J.

Translation certified true
on this 26th day of May 2008.
Carole Chamberlin, Translator

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PLACE OF HEARING: Sherbrooke, Quebec

DATE OF HEARING: February 6, 2008

REASONS FOR JUDGMENT BY: The Honourable Justice Paul Bédard

DATE OF JUDGMENT: April 14, 2008

APPEARANCES:

For the Applicant: The Applicant himself

Counsel for the Respondent: Chantal Roberge

COUNSEL OF RECORD:

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Name:

Firm:

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