

Docket: 2005-1851(IT)G

BETWEEN:

MAHVASH LECHCIER-KIMEL,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal called for hearing on July 16, 2009 at Toronto, Ontario

Before: The Honourable Justice Judith Woods

Appearances:

Counsel for the Appellant: Romeo Finder

Counsel for the Respondent: Jenny P. Mboutsiadis

JUDGMENT

It is ordered:

(a) the application by the appellant for an adjournment of the hearing is denied;

(b) the appeal with respect to an assessment made under the *Income Tax Act*, by notice dated July 17, 2002, is dismissed; and

(c) each party shall bear their own costs.

Signed at Ottawa, Canada, this 20th day of July 2009.

“J. M. Woods”

Woods J.

Citation: 2009 TCC 371
Date: 20090720
Docket: 2005-1851(IT)G

BETWEEN:

MAHVASH LECHCIER-KIMEL,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

(Delivered orally from the Bench on July 16, 2009)

Woods J.

[1] These are reasons delivered orally in respect of an adjournment request by the appellant in the matter of Mahvash Lechcier-Kimel and Her Majesty the Queen.

[2] The appeal concerns an assessment issued to the appellant in 2002 pursuant to section 160 of the *Income Tax Act*. The assessment relates to a transfer to the appellant from her spouse of a property municipally known as 10 High Point Road, Toronto. The transfer took place in 1990 at a time that outstanding taxes were owed by the husband.

[3] The appeal was called for hearing this morning, and at the outset counsel for the appellant indicated that he was seeking an adjournment so that the appellant could arrange for an appraisal of the subject property. It appears that an appraisal is critical to the appellant's appeal because the value of the property is a central issue in the appeal.

[4] Counsel indicated that the appellant was only able to find an appraiser willing to take on this assignment in the last few days. He stated that the problem stems from the fact that the valuation date is 1990, which is almost 20 years ago.

[5] After considering the submissions of both counsel and reviewing the court file, I have concluded that the request should be denied. My reasons may be briefly stated.

[6] First, in my view the appellant did not have a satisfactory explanation as to why an appraiser could not be found until a few days ago. This hearing date was set many months ago at the joint request of the parties and at their request two days were set aside for the hearing.

[7] Counsel stated that the appellant had been trying to find an appraiser and had been refused on many occasions. However, counsel did not submit affidavit evidence in support of this and no details were provided. Counsel indicated that he did not have first hand knowledge of this as the appellant herself had been attempting to obtain an appraiser. The appellant herself was not in attendance.

[8] The second consideration is that it was only after the appeal was called for hearing that the appellant made the request. It should have been apparent earlier that the appellant was not going to be in a position to proceed with the appeal today. Counsel for the respondent was notified of a possible adjournment request late last week but she and her expert witness were required to prepare to proceed with the appeal.

[9] No satisfactory explanation was given by the appellant for not seeking an adjournment earlier.

[10] Third, this matter has had a fairly lengthy procedural history and was the subject of a previous motion to dismiss for delay brought by the respondent after the Court had indicated that it would entertain such a motion. The motion record in that proceeding sets out the procedural history in some detail. The application for dismissal was denied, with reasons by Justice McArthur dated August 8, 2008. The judge concluded that, although the appellant had been responsible for delays, the respondent had as well since the assessment was issued 12 years after the relevant transaction took place. In his reasons, Justice McArthur described that the appellant had shown a cavalier attitude including a disregard for Court orders and procedures. The judge concluded that the appellant's delays could be compensated for with costs, and I understand that the costs ordered in the amount of \$5,000 were paid by the appellant.

[11] I would note that it is generally desirable for appeals to be decided on their merits rather than on procedural grounds. However, there are other important considerations to be taken into account as well in considering adjournment requests.

[12] I would refer to the comments of Bowie J. of this Court in the case of *Solomons v. The Queen*, 2003 DTC 505. At paragraph 5 of that decision, the judge states:

[...] It is a great convenience to counsel and to the parties that this Court fixes dates for trial months in advance; they do not have to be available for trial on short notice, as is the case in some other Courts. That convenience comes at a price, however; they must do what is required in order to be ready on the day fixed. [...]

[13] Also at paragraph 5, Justice Bowie continues as follows:

The reason advanced by the Appellant for seeking an adjournment of this trial does not weigh very heavily in the balance, compared to the public interest in efficient use of Court resources [...].

[14] In the matter before me, I have considered the various interests of both parties and the public interest as described by Justice Bowie. I would note in particular that the appellant did pay court costs of \$5,000 as ordered by Justice McArthur in the motion to dismiss. However, I have also taken into account the lengthy procedural history, including the conduct of a pre-hearing conference where the appellant did not submit a pre-hearing brief or attend the hearing.

[15] In considering the entire circumstances, I am not satisfied that it would be in the best interests of justice to grant the adjournment. The request is accordingly denied.

[16] Counsel for the appellant informed me that he is not prepared to proceed with the appeal today and would withdraw the appeal if the adjournment request is denied. Accordingly, the appeal will be dismissed.

[17] As the respondent has only sought costs if the adjournment is granted, I conclude that each party should bear their own costs.

Signed at Ottawa, Canada this 20th day of July 2009.

“J. M. Woods”

Woods J.

CITATION: 2009 TCC 371
COURT FILE NO.: 2005-1851(IT)G
STYLE OF CAUSE: MAHVASH LECHCIER-KIMEL and
HER MAJESTY THE QUEEN
PLACE OF HEARING: Toronto, Ontario
DATE OF HEARING: July 16, 2009
REASONS FOR JUDGMENT BY: The Honourable Justice J. M. Woods
DATE OF JUDGMENT: July 20, 2009
APPEARANCES:

Counsel for the Appellant: Romeo Finder

Counsel for the Respondent: Jenny P. Mboutsiadis

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