

Docket: 2003-1401(IT)G

BETWEEN:

MARK G. WELFORD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on September 15, 2009 at Toronto, Ontario

By: The Honourable Justice Judith Woods

Appearances:

For the Appellant: No one appeared

Counsel for the Respondent: John Shipley

JUDGMENT

The appeal with respect to assessments made under the *Income Tax Act* for the 1991, 1992, 1993, 1994 and 1995 taxation years is dismissed, with costs to the respondent.

Signed at Toronto, Ontario this 17th day of September 2009.

“J. M. Woods”

Woods J.

Citation: 2009 TCC 464
Date: 20090917
Docket: 2003-1401(IT)G

BETWEEN:

MARK G. WELFORD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Woods J.

[1] The appellant, Mark Welford, appeals with respect to assessments made under the *Income Tax Act* for the 1991, 1992, 1993, 1994 and 1995 taxation years.

[2] The appellant was assessed tax, penalties and interest in respect of alleged unreported income in excess of \$1,345,000 in the aggregate for all taxation years.

[3] It is alleged by the Minister that these amounts were fraudulently received as part of a scheme to defraud the appellant's employer, Bell Canada.

[4] In his original notice of appeal, the appellant denied receiving these amounts. The position changed, however.

[5] During a motion brought by the respondent for an order dismissing the appeal for failure to comply with pre-trial steps, which was heard by former Chief Justice Bowman on June 2, 2006, September 18, 2006 and October 25, 2006, the appellant stated that he was no longer disputing that he had received these amounts. The appellant acknowledged that the amounts were received, but he submitted that tax had already been withheld by the payor. The appellant confirmed to the former Chief Justice that the withholding issue was now the only issue to be decided.

[6] Chief Justice Bowman concluded that the appellant should have an opportunity to establish his new position. He expressed considerable reluctance, however, and stated that the appeal had very little, if any, chance of success. In the result, the motion was dismissed and the appellant was given an opportunity to amend his notice of appeal to reflect the new position.

[7] An amended notice of appeal was filed by the appellant on November 8, 2006. Although it fails to clearly set out that the only issue is whether tax had been withheld, it is clear from the appellant's representations to Chief Justice Bowman that this was his position.

[8] The appeal was heard on September 15, 2009, despite the fact that the appellant had informed the Registry the day before that he was not able to attend. I will comment on his request for an adjournment below.

[9] At the hearing, counsel for the respondent submitted that the appeal should be dismissed because the Court has no jurisdiction to adjudicate on whether tax withholdings have been made.

[10] I agree with this submission. It is clear from the transcript of the proceedings before Chief Justice Bowman that tax withholdings are the only issue to be decided. The Tax Court of Canada has no jurisdiction over this subject matter.

[11] The Tax Court of Canada derives its jurisdiction from the *Tax Court of Canada Act* and various taxing statutes. Even in relation to income tax, the Court does not have jurisdiction over all matters. The withholding of income tax is one such matter over which this Court lacks jurisdiction: *Boucher v. The Queen*, 2004 FCA 47, 2004 DTC 6085; *Neuhaus v. The Queen*, 2003 DTC 5469 (FCA).

[12] The appeal should be dismissed for these reasons.

[13] Before concluding, I would comment concerning a request for an adjournment of the hearing that was made by the appellant on the day before the hearing.

[14] The request was brought to my attention, and submissions were promptly received from counsel for the respondent. After considering the request and the submissions, I denied the request for adjournment.

[15] The request was set out in an email communication in which the appellant indicated that he was not able to appear at the hearing because of a medical problem involving kidney stones.

[16] In response, counsel for the respondent submitted as follows:

The Respondent's position that the request for adjournment be denied is supported by the following facts:

- a) it is not timely. On August 26, 2009, I wrote the Appellant an e-mail requesting information designed to make the hearing of the appeal more orderly and efficient. I received no reply and no indication that the Appellant would not be able to proceed to hearing on September 15, 2009. In fact, I have received no communication from the Appellant respecting his request for an adjournment until the Court forwarded his e-mail today;
- b) it is not sufficiently documented. More particularly, no medical evidence is provided demonstrating the Appellant is unable to appear at his hearing tomorrow or, importantly, when and if, he will ever be able to appear;
- c) the Appellant has previously been permitted to adjourn his appeal on the eve of the hearing for medical reasons, which the Respondent submits could have been accommodated;
- d) on its face, the Appellant's appeal is frivolous. Notwithstanding the broader allegations in his Amended Notice of Appeal, the Appellant has advised this Court, specifically former Chief Justice Bowman, that the only issue on the appeal was whether the monies received were "net of tax". Contrary to his previous evidence on discovery, the Appellant now admits that he did, in fact, receive the unreported income but denies it was received by fraud. He asserts the unreported income was "net of tax". Even if true, his appeal must in any event fail. See excerpt of the Respondent's written submissions at paragraphs 63 to 72, a copy of which is enclosed.
- e) given the appeal is frivolous on its face since the only issue being pursued is, that is whether the tax has been paid, outside of the jurisdiction of the Tax Court of Canada, the only reasonable inference is that the Appellant is attempting to delay collection of tax owing. Moreover, the Appellant confirmed his understanding that collection action cannot be taken until after the appeal is concluded. He did so both before the Registrar hearing the taxation of the Respondent's costs awarded by then Chief Justice Bowman and before then Chief Justice Bowman himself.
- f) the appeal dates back to the 1991 to 1995 taxation years and has been in this court for 6 years.

[17] In all the circumstances of this appeal, I was not satisfied that the appellant's uncorroborated statement about his current medical condition was true. It was clear from the Court files that the appellant's health has not been good for some time. I was not convinced, however, that the current adjournment request was not simply a delay tactic.

[18] This matter has a lengthy procedural history. The notice of appeal was filed in 2003 and the taxation years at issue go back more than 15 years. For most of the period of the litigation, the appellant has been self-represented.

[19] Last March, Chief Justice Rip assigned this matter to me for case management. Based on my review of the Court files at that time, it appeared that this Court had been convened on nine separate days to deal with procedural matters in this litigation.

[20] By way of order dated March 20, 2009, I set the appeal down for hearing on September 15, 2009. To my knowledge, the Court has had no communication from the appellant during this period until the adjournment request was received.

[21] Given the history of this litigation, and the lateness of the request for the adjournment, I concluded that the interests of justice weighed in favour of no further delay.

[22] I noted in particular the repeated submissions to this Court by counsel for the respondent that the appellant was unduly prolonging the litigation to delay collection.

[23] In all the circumstances, it was incumbent upon the appellant to provide better supporting evidence of his inability to attend the hearing on September 15, 2009.

- [24] The request for adjournment was denied accordingly.
- [25] In the result, the appeal will be dismissed with costs to the respondent.

Signed at Toronto, Ontario this 17th day of September 2009.

“J. M. Woods”

Woods J.

CITATION: 2009 TCC 464

COURT FILE NO.: 2003-1401(IT)G

STYLE OF CAUSE: MARK G. WELFORD and
HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: September 15, 2009

REASONS FOR JUDGMENT BY: The Honourable Justice J. M. Woods

DATE OF JUDGMENT: September 17, 2009

APPEARANCES:

For the Appellant: No one appeared

Counsel for the Respondent: John Shipley

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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