

Docket: 2009-719(IT)G

BETWEEN:

CHRISTOPHER J. ROPER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion heard on March 28, 2012, at Toronto, Ontario

Before: The Honourable Justice Wyman W. Webb

Appearances:

Counsel for the Appellant: John D. Buote
Counsel for the Respondent: Dominique Gallant

ORDER

The Respondent's motion requesting that the Appellant's appeal be dismissed, is granted, without costs, and the Appellant's appeal is dismissed.

Signed at Halifax, Nova Scotia, this 11th day of May 2012.

“Wyman W. Webb”

Webb J.

Citation: 2012TCC157
Date: 20120511
Docket: 2009-719(IT)G

BETWEEN:

CHRISTOPHER J. ROPER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Webb J.

[1] This matter has a long history. The Appellant, who is a lawyer, filed his notice of appeal on February 20, 2009. A demand for particulars was made by the Respondent and the Appellant requested three extensions of time to provide his answers. Eventually the Appellant provided his answers on July 16, 2009. A Reply was filed on August 24, 2009.

[2] The parties agreed upon certain dates for the completion of various steps in the litigation and an Order of Justice Jorré dated February 2, 2010 was issued to reflect these agreed upon dates. In particular the Order provided that the parties were to file and serve lists of documents by April 1, 2010. The Respondent filed and served a list of documents on April 1, 2010 but the Appellant did not file a list of documents by April 1, 2010.

[3] The parties appeared before Justice Archambault on August 30, 2010 as a result of a motion brought by the Respondent to dismiss the Appellant's appeal following the failure of the Appellant to comply with the Order that had been issued by Justice Jorré.

[4] The motion to dismiss the Appellant's appeal was denied and the Appellant was ordered to prepare a list of documents and serve the list on the Respondent by September 13, 2010. The Appellant served his list of documents a day late –

September 14, 2010. September 13, 2010 was a Monday and no explanation was provided for the late service of the list of documents. The only documents on the Appellant's list of documents were copies of his tax returns for 2001 (for the post-bankruptcy period) and for 2002.

[5] In the Order that was issued by Justice Archambault (which was dated September 13, 2010), it was noted that:

Failure by the Appellant to comply with the present order may result in the Respondent filing a motion to dismiss Appellant's appeal and this motion could be granted by this Court.

[6] The Respondent requested that the Appellant's appeal be dismissed for failure to comply with the Order of Justice Archambault, first by a letter and later by a motion.

[7] Justice Boyle heard the Respondent's motion on February 7, 2011 and dismissed this motion. As part of the Order issued by Justice Boyle, he provided that the Appellant could, until February 18, 2011, add to his list of documents and he ordered the Appellant to pay costs of \$1,000 on or before March 9, 2011.

[8] On February 18, 2011 the Appellant sent a list of documents to counsel for the Respondent and on March 9, 2011 the Appellant sent a cheque for \$1,000. This cheque was later returned for insufficient funds.

[9] While the Respondent was requesting a hearing of the appeal the Appellant was requesting a pre-hearing conference. The Appellant's request for a pre-hearing conference was denied and the appeal was set down for hearing on September 29, 2011.

[10] On September 27, 2011 the Appellant requested that the hearing scheduled for September 29, 2011 be adjourned to allow him to retain counsel. The parties appeared before Associate Chief Justice Rossiter on September 29, 2011. Associate Chief Justice Rossiter granted the Appellant's request for an adjournment. He rescheduled the hearing for February 16, 2012. He also ordered the Appellant to pay costs of \$3,500 by November 30, 2011.

[11] On November 30, 2011 the Appellant sent a cheque to counsel for the Respondent in the amount of \$3,500. This cheque was later returned because the account on which it had been drawn was closed.

[12] On the date scheduled for the hearing of the Appellant's appeal, February 16, 2012, the parties appeared before Justice Jorré. Counsel for the Appellant sought to introduce documents that were not included in the Appellant's list of documents.

[13] The appeal was adjourned. In the Order issued by Justice Jorré dated February 21, 2012 he recited some of the lengthy history. He provided in the Order that the Appellant was to pay costs in the amount of \$5,500 by March 16, 2012. He also provided that if any of the costs of \$1,000 awarded by Justice Boyle or \$3,500 awarded by Associate Chief Justice Rossiter were unpaid, they were also to be paid by March 16, 2012. All of the costs were to be paid by certified cheque.

[14] The Order also stated that:

6. if the costs are not paid on or before March 16, 2012, the appeal shall be dismissed on application by the respondent with a supporting affidavit.

[15] The Appellant did not pay the amount of \$10,000 by March 16, 2012 and the Respondent brought this motion to request that the Appellant's appeal be dismissed. After the Respondent brought this motion the Appellant paid the amount of \$10,000.

[16] During the hearing of this motion it became clear that the Appellant is encountering severe financial difficulties and has been experiencing such difficulties for some time. He does not have a house, a car, any savings or any tangible assets. He was evicted from the condominium that he was renting. He moved to another condominium in the same building (that he is also renting) and is in arrears for the payment of rent for this unit. He has lost staff at his law practice because of his inability to pay his debts. Although it is not clear when his financial problems began it appears that at least since October of 2011 he has been unable to pay his debts as they become due. He tried to borrow the \$10,000 from family members to pay the costs that were to be paid by March 16, 2012 but was unable to do so. He eventually was able to borrow the \$10,000 in a private transaction.

[17] Prior to this motion, there does not appear to have been any indication by the Appellant that he was experiencing severe financial problems. At the hearing on February 16, 2012 (following which the Order dated February 21, 2012 was issued requiring him to pay the \$10,000 in outstanding costs by March 16, 2012) there was no indication by the Appellant that he would not be able to pay the \$10,000 by March 16, 2012.

[18] It is too late at a hearing, following the failure of the Appellant to pay the \$10,000 by March 16, 2012, for the Appellant, for the first time, to raise the issue of his inability to pay this amount by that date when his financial difficulties began several months before he was ordered to pay this amount. The Appellant is a lawyer and therefore would understand clearly the consequences of failing to comply with a clear order of this Court. The Order of Justice Jorré is clear that the Appeal would be dismissed if the Appellant did not pay the outstanding cost awards of \$10,000 by March 16, 2012. The Appellant did not pay this amount by March 16, 2012 and therefore as provided in the Order of Justice Jorré, his appeal is dismissed.

[19] Counsel for the Respondent also asked for additional costs. However, since the Respondent has already been awarded costs of \$10,000 (which have now been paid) in a matter in which the appeal has not been heard, no additional costs will be awarded.

[20] As a result the Respondent's motion requesting that the Appellant's appeal be dismissed, is granted, without costs, and the Appellant's appeal is dismissed.

Signed at Halifax, Nova Scotia, this 11th day of May 2012.

“Wyman W. Webb”

Webb J.

CITATION: 2012TCC157
COURT FILE NO.: 2009-719(IT)G
STYLE OF CAUSE: CHRISTOPHER J. ROPER AND HER
MAJESTY THE QUEEN
PLACE OF HEARING: Toronto, Ontario
DATE OF HEARING: March 28, 2012
REASONS FOR ORDER BY: The Honourable Justice Wyman W. Webb
DATE OF ORDER: May 11, 2012

APPEARANCES:

Counsel for the Appellant: John D. Buote
Counsel for the Respondent: Dominique Gallant

COUNSEL OF RECORD:

For the Appellant:

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For the Respondent:

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