

Docket: 2008-711(IT)APP

BETWEEN:

CHANTAL BOURDAGES,

Applicant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Application for an order extending time heard on common evidence with the application an order extending time made by **Jean-Marie Perreault (2008-720(IT)APP)** on July 22 and November 4, 2008, at Percé, Quebec.

Before: The Honourable Justice Paul Bédard

Appearances:

For the Applicant: The Applicant herself

Counsel for the Respondent: Vlad Zolia

ORDER

The application for an order extending the time within which an appeal may be instituted under the *Income Tax Act* in respect of the 2003 taxation year is allowed, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 24th day of November 2008.

“Paul Bédard”

Bédard, J.

Translation certified true
on this 12th day of January 2009.
Bella Lewkowicz, Translator

Docket: 2008-720(IT)APP

BETWEEN:

JEAN-MARIE PERREAULT,

Applicant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

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Citation: 2008 TCC 623
Date: 20081124
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2008-720(IT)APP

BETWEEN:

CHANTAL BOURDAGES,
JEAN-MARIE PERREAULT,

Applicants,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR ORDER

Bédard J.

[1] These are two applications for an order extending the time within which an appeal may be instituted with the Court from reassessments made by the Minister of National Revenue (“Minister”) under the *Income Tax Act* (“Act”) against Chantal Bourdages and Jean-Marie Perrault (“Applicants”) for the 2003 taxation year. Both applications were heard on common evidence.

Context

[2] On July 31, 2006, the Minister sent each Applicant a Notice of Reassessment for the 2003 taxation year.

[3] On or around October 27, 2006, the Applicants served on the Minister their objection to the reassessments made.

[4] On January 23, 2007, the Minister confirmed the reassessments made in regard to the Applicants. A letter dated January 23, 2007, was sent, by regular mail (to 221, Route 132, Bonaventure, Quebec G0C 1E0), to each Applicant informing them of the

confirmation. I would like to draw attention to the fact that neither one of these letters was returned to the Canada Customs and Revenue Agency (“Agency”).

[5] In mid-May 2007, the Minister sent each Applicant, at the address as written in paragraph 4, a statement of account with respect to the reassessments made in their regard. Once the statements of account were received, the Applicants contacted their tax specialist, Gérard Parent, to try and gain an understanding of what was occurring.

[6] On May 18, 2007, Mr. Parent called Yanik Vaugeois, the appeals officer responsible for making the reassessments, to ask him why the Minister had sent statements of account to his clients when the reassessments had not been confirmed. Mr. Parent explained that Mr. Vaugeois informed him that on January 23, 2007, the Minister had informed each of his clients (by regular mail to the address as written in paragraph 4) of the confirmation of the reassessments made in their regard. Mr. Parent testified that he then told Mr. Vaugeois that neither he nor his clients had received the Notices of Confirmation. Mr. Parent added that he asked Mr. Vaugeois to send him the Notices of Confirmation. Still on May 18, 2007, Mr. Parent informed his clients of his action and that the Minister had confirmed the reassessments January 23, 2007.

[7] On June 26, 2007, the Applicants sent Mr. Parent the new statements of account (with regard to the reassessments) that they had just received.

[8] On July 5, 2007, Mr. Parent called Alexandre Berthèmeau, an Agency employee with the “Services for Individuals”. Mr. Parent explained that neither he nor his clients had yet received the Notices of Confirmation and he asked Mr. Berthèmeau to send him these notices.

[9] On or around July 19, 2007, the Applicants phoned Jacynthe Papineau, a customer service agent at the Quebec Regional Office of the Agency in Montréal, in order to obtain the Notices of Confirmation.

[10] On July 19, 2007, Ms. Papineau sent both Applicants a letter (by regular mail to the address as written in paragraph 4) to which was attached a copy of the letter dated January 23, 2007, advising of the confirmation of the reassessment. The Applicants testified never having received any of these letters.

[11] At the beginning of October 2007, Mr. Parent again spoke with an Agency customer service agent to obtain the Notices of Confirmation.

[12] On February 22, 2008, each of the Applicants filed with the Court an application for an order extending the time within which an appeal may be instituted from the reassessment, together with a Notice of Appeal.

Position of the Applicants

[13] The Applicants submitted that

- 1) it was impossible to submit an application for an order extending the time under section 169 of the Act because they never received the Notices of Confirmation, despite their efforts and Mr. Parent's repeated efforts to obtain them;
- 2) they still intend to file an appeal;
- 3) the non-receipt of the Notices of Confirmation explains why they submitted their application for an order extending the time several months after finding out that the Minister had confirmed the reassessments. I would point out that, on May 18, 2007, Mr. Parent verbally informed the Applicants that the Minister had confirmed the reassessments and that the applications for an order extending the time were submitted February 22, 2008, which is approximately two months before the expiration of the one-year period provided for in applications pursuant to paragraph 167(5)(a) of the Act. The Applicants explained that they waited until February 22, 2008 to submit their extension applications because Mr. Parent had told them he needed to determine the Minister's reasons (for confirming the reassessments), which normally appear in the Notice of Confirmation, so that he could properly prepare for the Notice of Appeal that must be submitted with the extension application. The Applicants explained that, on February 22, 2008, they made the decision to submit their extension applications, even though they did not know the Minister's reasons for confirming the reassessments, because they concluded that any new initiative to obtain the Notices of Confirmation would be as ineffective as previous initiatives and they did not want to risk missing the deadline established pursuant to paragraph 167(5)(a) of the Act.

Analysis and conclusion

[14] I would like to emphasize that the Applicants and Mr. Parent seemed to me to be straightforward people, who were sincere and acting in good faith. The

Applicants convinced me that on January 22, 2008, they had not received their Notices of Confirmation, even though they did not succeed in explaining why they had received their statements of account related to the reassessments. Indeed, only the fact that the Applicants never received their Notices of Confirmation explains their repeated efforts and those of Mr. Parent in order to get them.

[15] The Applicants convinced me that they always intended to institute an appeal from reassessments and that they were unable to do so in the time allotted under section 167 of the Act because they only learned on May 18, 2007, that the Minister had confirmed the reassessments on January 22, 2007.

[16] The only thing left to determine in the present case is if the Applicants submitted their application for an order extending the time as soon as the circumstances allowed. Counsel for the Respondent maintains that the Applicants should have submitted their application as soon as they found out that reassessments were confirmed. In my opinion, the Applicants had the right to wait for their Notices of Confirmation in order to find out the reasons given in these notices to confirm the reassessments, in order to be able to properly prepare the Notices of Appeal that must accompany the application. We cannot criticize the Applicants for waiting until the last minute under these circumstances (two months before the expiration of the deadline provided for in paragraph 167(5)(a) of the Act) to submit their application.

[17] In my opinion, the Applicants respected all the conditions in subsection 167(5) of the Act and their applications for an order extending the time within which they may institute an appeal from reassessments are allowed.

Signed at Ottawa, Canada, this 24th day of November 2008.

“Paul Bédard”Bédard, J.

Translation certified true
on this 12th day of January 2009.
Bella Lewkowicz, Translator

CITATION: 2008 TCC 623

COURT FILE NOS.: 2008-711(IT)APP and
2008-720(IT)APP

STYLE OF CAUSE: CHANTAL BOURDAGES AND
JEAN-MARIE PERREAULT AND
MNR.

PLACE OF HEARING: Percé, Quebec

DATES OF HEARING: July 22 and November 4, 2008

REASONS FOR ORDER BY: The Honourable Justice Paul Bédard

DATE OF ORDER: November 24, 2008

APPEARANCES:

For the Applicants: The Applicants themselves

Counsel for the Respondent: Vlad Zolia

COUNSEL OF RECORD:

For the Applicants:

Name:

Firm:

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