

BETWEEN:

SÉBASTIEN GIRARD (PRO GESTION 3000),

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

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Application heard on August 21, 2012, at Québec, Quebec

Before: The Honourable Justice Paul Bédard

Appearances:

Counsel for the applicant:

Stéphanie Boulianne

Counsel for the respondent:

Louis Riverin

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**ORDER**

Upon the application for an order extending the time within which to file a notice of objection in respect of a reassessment made under the *Excise Tax Act*, for the period from January 1, 2008, to December 31, 2008;

And upon the submissions of the parties;

The application is allowed in accordance with the attached Reasons for Order.

Signed at Ottawa, Canada, this 28th day of September 2012.

"Paul Bédard"

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Bédard J.

Translation certified true  
on this 9th day of November 2012  
Margarita Gorbounova, Translator

Citation: 2012 TCC 343  
Date: 20120928  
Docket: 2012-1909(GST)APP

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SÉBASTIEN GIRARD (PRO GESTION 3000),

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### **REASONS FOR ORDER**

Bédard J.

[1] In this application the applicant claims that he personally filed at the offices of the Canada Revenue Agency (the Agency) within the time limit of 90 days prescribed by the *Excise Tax Act* (the ETA) a notice of objection to the notice of assessment he had received, but that the Agency lost the documents and therefore it was impossible for him to act.

The issue

[2] The Court must essentially determine whether it believes the applicant's version that he served the notice of objection within the time limit prescribed by the ETA, but that the Agency lost the notice of objection.

The facts

[3] On June 8, 2011, The Minister of Revenue of Québec (the Minister) assessed the applicant regarding Part IX of the ETA (for the period from January 1, 2008, to December 31, 2008) and sent him a notice of assessment on the same day (Exhibit R-1).

[4] On October 13, 2011, the applicant filed an application for an extension of time in which to file a notice of objection to the assessment dated June 8, 2011 (Exhibit R-3). In that application, counsel for the applicant stated the following:

[TRANSLATION]

Following receipt of the notice of assessment issued by Revenu Québec and Revenu Québec on behalf of the Canada Revenue Agency, our client filed in person at the offices of Revenu Québec notices of objection to these notices of assessment within the 90-day time limit prescribed by the Act.

Last week, when our client followed up on his notices of objection, he was informed that no trace of said notices had been found in the files of Revenu Québec. Consequently, our client is considered as not having objected to the notices of assessment that had been sent to him, and, at the time of this letter, it is too late to do so despite the fact that he had taken the necessary measures in August 2011.

Accordingly, we ask you to extend the time for objection in order to allow our client to re-file his notices of objection to the assessments mentioned in the subject line.

Our client has serious grounds for defence to argue against his notices of assessment. It is therefore in the interest of justice to allow him to file his notices of objection even though the time limit for doing so has expired.

[5] In a letter dated February 2, 2012 (Exhibit R-4), addressed to the applicant, the Minister acknowledged receipt of the application for an extension of time and asked that a copy of the notice of objection that the applicant claimed to have filed within the 90-day time limit set out in the ETA and proof of mailing or filing that notice be provided to him.

[6] The applicant was unable to provide the proof requested by the Minister in his letter dated February 2, 2012. On April, 12, 2012, the Minister informed the applicant of his decision to dismiss the application for an extension of time (Exhibit R-4).

[7] On May 14, 2012, that is, within the prescribed time limit, the applicant filed with the Court an application for an extension of time at issue in the case at bar. The relevant paragraphs of this application read as follows:

[TRANSLATION]

3. Following receipt of the notice of assessment and within the objection time limit, namely, during the month of August 2011, the applicant personally visited the offices of the Agence du revenu du Québec on de Marly Street in Québec, in order to obtain information about the steps to take in order to dispute that notice of assessment;

4. A representative informed the applicant that he needed to fill out a notice of objection and then drop it in a box provided for that purpose at reception;
5. The applicant filled out the notice of objection in question on site on the same day and dropped it in the box that was shown to him;
6. At the beginning of October 2011, the applicant contacted the Agency in order to follow up on his file;
7. He learned at that time that no trace of his notice of objection could be found in the Agency's file;
8. The applicant then promptly mandated his counsel to file the application for an extension of time, filed in support of this letter as Exhibit R-2;
9. In a letter dated February 2, 2012, which was filed in support of this application as Exhibit R-3, the Agency asked the applicant to provide it with a copy of his notice of objection and with proof of mailing and/or of receipt.
10. The applicant informed the Agency through his counsel that he was unable to provide any more documents given that he had filled out the objection form on site and that he had dropped it immediately into the box provided for that purpose and did not keep a copy, as it is stated in the letter filed in support of this application as Exhibit R-4.
11. The Agency still decided to dismiss the applicant's application for an extension of time despite the fact that there was no valid reason for it to doubt the truth of his allegations to the effect that he had indeed filed a notice of objection within the prescribed time limit. The Agency's decision is filed in support of this application as Exhibit R-5;
12. In addition, as specified in the letter in Exhibit R-4, it is highly unlikely that the applicant would have let the objection period run out without doing anything since he was well aware of the consequences of not doing anything given his bad experience with another file related to this one;
13. The applicant has good ground for defence to argue and it would be a serious injustice if he were prevented from doing so especially due to an administrative error.

### Applicant's testimony

[8] Essentially, the applicant's testimony discloses the following:

- (i) Given his experience with a related file, he knew that he had to object within the 90 days prescribed by the ETA. Therefore, he personally went to the Agency's offices on de Marly Street in Québec with his car, which he parked on de Marly Street in a space where parking was authorized (for free) for a period of 60 minutes. On site, an Agency clerk handed him a form prescribed for objections and told him that, once the form is filled out, it should be dropped in a box provided for this purpose at reception. The applicant explained that he had filled out the form and dropped it in the box on August 29, 2011. The applicant filed in evidence a copy of his planner for August 29, 2011 (where it is written [TRANSLATION] "Objection Revenu Québec pers.") in support of his testimony that he had gone to the Agency's offices in Québec to object to the notice of assessment (see Exhibit R-2). I note that the applicant filed no other relevant evidence proving that he was in Québec on August 29, 2011, even though he had had other activities in Québec on that date. The applicant testified that he would have filed other relevant evidence of his presence in Québec on August 29, 2011, if he had known that that relevant evidence would have helped support his testimony. I note right away that the letters from the applicant's counsel (Exhibits R-3 and R-5) and the applications for an extension of time state that the notice of objection had been filed in August 2011 without, however, specifying the day on which the notice was filed. Regarding this, the applicant explained that the date of August 29 had not been mentioned because only recently had he noticed in his planner a note stating that he had objected to the notice of assessment on August 29, 2011.
- (ii) Regarding the reasons for objection, the applicant explained that the Minister had wrongly included in his income from operating a business (snow removal from roofs) amounts from a company of which he was a shareholder since the amounts were advances that the company had given him.

### Testimony of Julie Bisson

[9] The testimony of Ms. Bisson, Administrative Technician with the Agency, essentially discloses the following:

- (i) After a thorough review of the Minister's file, she noted that no notice of objection had been received by the Minister. She also noticed that the Minister's files did not indicate that the applicant had contacted the Agency in October 2011 to follow up on his file as alleged at paragraph 6 of the

application for an extension of time and in the letter dated October 13, 2011 (Exhibit R-3);

- (ii) All notices of objection filed at the Agency's offices on de Marly Street in Québec in the box provided for that purpose were necessarily forwarded by the people responsible for mail to the objections director, in accordance with departmental directive D1A-32 (Exhibit I-6). Ms. Bission testified that occasionally the Agency did temporarily misplace objection notices. She explained that these temporarily misplaced notices of objections were all eventually forwarded to the director of objections after a few months.

[10] Furthermore, the evidence showed that the applicant had not yet filed his tax returns for the 2010 and 2011 taxation years.

[11] The Minister is of the view that the application for an extension of time must be dismissed essentially for two reasons:

- (i) The burden of proof was on the applicant, who did not prove that he had filed the notice of objection on August 29, 2011, as the applicant's evidence was based essentially on his testimony, which the Minister considers not to be credible given the following circumstances:
  - (1) The applicant did not keep relevant evidence showing that he had filled out and filed a notice of objection despite the experience he had had with a related file;
  - (2) The applicant is a tax offender;
  - (3) The letters from the applicant's counsel and the applications for an extension of time state that the notice of objection was filed in August 2011 but do not specify the day of August on which that notice was filed. Counsel for the respondent maintains that the applicant's explanation regarding this seems at the very least questionable;
  - (4) The applicant admitted that he was able to provide other relevant evidence of the fact that he had travelled to Québec on August 29, 2011. The applicant did not do so. Counsel for the respondent argues that I must draw a negative inference from this failure.

- (ii) The applicant did not demonstrate that there are reasonable grounds for the appeal.

### Analysis and conclusion

[12] In this case, there are two issues: the first is whether it was impossible for the applicant to act, and the second is whether the applicant has demonstrated that there were reasonable grounds for his appeal. In regard to the first point, namely, the actual impossibility to act, the Court notes that this is a question of credibility. In other words, is the applicant's version that he had filed his notice of objection within the time limit prescribed by the ETA credible? The Court noted no contradictions in the applicant's testimony. His testimony is plausible. The applicant seems to be a credible person. The fact that he has not yet filed his tax returns for the 2010 and 2011 taxation years is not in itself a reason to reject his testimony. In fact, not filing his tax returns does not automatically make the applicant a liar. The fact that he had failed to file all of the relevant evidence (that he was able to file) in support of his testimony to the effect that he was in Québec on August 29, 2011, does not allow me to automatically draw a negative inference from that failure and thus reject his testimony. The applicant still provided relevant evidence in support of his testimony (in this case, Exhibit R-2). In the circumstances, that relevant evidence seems sufficient to me to support his testimony. I believe the applicant's testimony that he would have provided other relevant evidence if he had known that it was indispensable to establishing his credibility. Finally, the fact that the Minister did not find the notice of objection filed by the applicant is not a good reason to reject the applicant's testimony. Automatically rejecting the applicant's testimony on the ground that the Minister did not find the notice of objection would ultimately obligate taxpayers to send their notices of objection by registered mail. I note that the ETA does not obligate taxpayers to proceed in this way. The fact that the Minister cannot find a notice of objection merely obliges me to consider the applicant's testimony more carefully but does not authorize me to reject it.

[13] With regard to the second point, the applicant's explanations regarding his grounds for objection appeared to be based on reasonable grounds.

[14] For these reasons, the applicant's application is allowed.



Signed at Ottawa, Canada, this 28th day of September 2012.

"Paul Bédard"

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Bédard J.

Translation certified true  
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STYLE OF CAUSE: SÉBASTIEN GIRARD (PRO GESTION  
3000) AND THE QUEEN

PLACE OF HEARING: Québec, Quebec

DATE OF HEARING: August 21, 2012

REASONS FOR ORDER BY: The Honourable Justice Paul Bédard

DATE OF ORDER: September 28, 2012

APPEARANCES:

Counsel for the applicant: Stéphanie Boulianne  
Counsel for the respondent: Louis Riverin

COUNSEL OF RECORD:

For the applicant:

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