

Docket: 2005-4409(IT)G

BETWEEN:

GEORGE WOLSEY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion heard on August 23 and 24 and September 15 and 16, 2016,
at Vancouver, British Columbia

Before: The Honourable Justice David E. Graham

Appearances:

Counsel for the Appellant: Daniel Barker

Counsel for the Respondent: Johanna Russell
Pavanjit Mahil-Pandher

JUDGMENT

George Wolsey's application to have the October 9, 2014 dismissal of his appeal with respect to his 2000, 2001 and 2002 tax years set aside pursuant to Rule 140(2) of the *Tax Court of Canada Rules (General Procedure)* is denied.

Costs are awarded to the Respondent.

Signed at Ottawa, Canada, this 24th day of October 2016.

“David E. Graham”

Graham J.

Citation: 2016 TCC 236
Date: 20161024
Docket: 2005-4409(IT)G

BETWEEN:

GEORGE WOLSEY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Graham J.

[1] George Wolsey's appeal with respect to his 2000, 2001 and 2002 tax years was dismissed when he failed to appear at a status hearing. Mr. Wolsey argues that he failed to appear at the status hearing because he was unaware that the hearing was occurring and unaware that his counsel had removed himself from the record. The Respondent does not believe Mr. Wolsey's explanation. The Respondent believes Mr. Wolsey's failure to appear was part of what the Respondent views as a long standing attempt to delay the prosecution of his appeal.

[2] Rule 140(2) of the *Tax Court of Canada Rules (General Procedure)* permits the Court to set aside a dismissal for failure to appear at a status hearing. Mr. Wolsey has applied pursuant to that Rule to have the dismissal set aside.

[3] Mr. Wolsey's appeal relates to the reassessment of approximately \$1.165 million in alleged unreported income, shareholder benefits and capital gains relating to a company known as Delivery Drugs Ltd. The Minister of National Revenue alleges that Mr. Wolsey directed many of these amounts to be paid to companies including 892370 Alberta Ltd. dba Professional Services Company ("PSC"). Mr. Wolsey's primary argument appears to be that the income in question was PSC's income not his. PSC had never filed tax returns.

[4] Mr. Wolsey filed his appeal in 2005 but the relevant period of time for the purposes of this Application is June to October of 2014. Specifically, the key events are an August 27, 2014 status hearing, the removal of counsel of record on September 17, 2014 and, finally, the October 9, 2014 status hearing which Mr. Wolsey failed to attend.

[5] I will set out the test for setting aside a dismissal. Before analyzing whether Mr. Wolsey has met that test, I will first describe the key professional who acted for him, discuss various issues of solicitor-client privilege, and comment on Mr. Wolsey's overall credibility.

I. Test for Setting Aside a Dismissal

[6] Rule 140(2) allows taxpayers to apply to set aside a dismissal within 30 days of the dismissal. There are two tests that must be met to set aside a dismissal under Rule 140(2) when the taxpayer applies within that time limit. The taxpayer must show that (*Burke v. The Queen*;¹ *Jamieson v. The Queen*;² *Amethyst Greenhouses Ltd. v. The Queen*³):

- a) he or she has an arguable case; and
- b) he or she has a reasonable explanation for failing to appear at the hearing.

[7] The Respondent does not dispute the fact that Mr. Wolsey has an arguable case. Thus, the only issue is whether Mr. Wolsey provided a reasonable explanation for failing to appear at the October 9, 2014 status hearing.

II. Professional Representation and Privilege

[8] In June 2014, Mr. Wolsey's counsel of record was a lawyer named Sukhminder Virk. Mr. Virk was called as a witness by the Respondent. I found Mr. Virk to be a credible witness. As Mr. Wolsey is indirectly attacking Mr. Virk's conduct of the litigation, I would like to make it abundantly clear at the outset that all of the evidence before me indicates that Mr. Virk acted at all times in a

¹ 2008 TCC 680

² 2012 TCC 144

³ 2006 TCC 575

professional manner and bears no responsibility for Mr. Wolsey's failure to appear at the October 9 status hearing.

[9] I found that communications between Mr. Virk and Mr. Wolsey relating to Mr. Virk's removing himself from the record, the August 27 status hearing and the October 9 status hearing were not privileged. I reached this conclusion for three reasons. First, Mr. Wolsey specifically put those communications into issue in this Application. Second, if a taxpayer is not going to be present at a status hearing, Rule 125(4) specifically requires counsel to file proof that counsel has given the taxpayer notice of that status hearing. Thus, the communication between counsel and his or her client as to the existence of a status hearing is a communication that is not intended to be confidential. Finally, if counsel is going to remove himself or herself from the record, Rule 33 specifically requires counsel to serve notice of his or her intention to cease to act on his or her client and the Respondent. Rule 33 also requires counsel to file that notice, along with proof of service, with the Court. Thus, the communication between counsel and his or her client whereby the client is informed that counsel is ceasing to act for him or her is not intended to be confidential.

[10] PSC was represented by a group of tax advisors known as Avocis Tax Group LLP. One of the principals of Avocis was a man named Balbindra Singh. Mr. Singh testified that Avocis was not representing Mr. Wolsey on his personal tax matter. I do not accept that testimony. It is contradicted by the documentary evidence and by Mr. Singh's conduct. I find that Avocis was representing both Mr. Wolsey and PSC. I found Mr. Singh to have a poor memory. In addition, I found that he was often confused by or did not fully listen to questions that were asked of him such that I did not have confidence that his answers were accurate. I have accordingly given less weight to Mr. Singh's testimony and, where it was contradicted by the evidence of a more reliable witness, I have preferred that evidence.

[11] A lawyer named Gavin Laird was also involved with Mr. Wolsey and/or PSC in some manner during the months of August, September and October, 2014. Mr. Laird never came on the record with the Court. I found that Mr. Wolsey's communications with Mr. Laird, including the question of whether Mr. Laird was retained and the nature of his retainer, were privileged. I also found that Mr. Wolsey had generally not waived that privilege. The exception to this finding related to emails that Mr. Wolsey had denied receiving from Mr. Virk. Mr. Wolsey put the receipt of those emails squarely in issue. To the extent that any such emails were forwarded to Mr. Laird by Mr. Wolsey, that went directly to the question of

whether Mr. Wolsey had received them. Accordingly, I held that Mr. Wolsey had waived privilege over any communication with Mr. Laird whereby Mr. Wolsey forwarded such emails or whereby he or others communicated with Mr. Laird in a manner that indicated that he had received those emails.⁴

III. Credibility

[12] Before turning to the events in question, I would like to make some general observations about Mr. Wolsey's credibility. My assessment of that credibility has a significant impact on my interpretation of Mr. Wolsey's view of those events.

[13] I did not find Mr. Wolsey to be credible. He was very evasive under cross-examination. He provided implausible explanations for a number of occurrences.⁵ The documentary evidence clearly shows that he misled the Court in both his affidavit and his oral testimony. He also had an improbably poor recollection of events that occurred only two years ago and that he knew very shortly thereafter would be very important to him.

[14] Two key examples of Mr. Wolsey's lack of credibility relate to Mr. Wolsey's use of an email address ending in "shaw.ca" (the "Shaw email address") and his use of a cell phone with a 604 area code (the "604 phone").⁶ Mr. Wolsey's explanation for not appearing at the October 9, 2014 status hearing is dependent on his not having received certain emails sent to the Shaw email address and his not having received certain voicemail messages left on the 604 phone. The Shaw email address was used by at least three law firms, one tax advisory firm, counsel for the Respondent and the Court itself to correspond with Mr. Wolsey.

⁴ Mr. Wolsey was asked on cross-examination whether he had told Mr. Laird or been told by Mr. Laird about either the October 9 status hearing or Mr. Virk getting off the record. His counsel did not object to those questions at the time. Counsel later argued that privilege had not been waived through the responses to the questions. I accept that, in the circumstances, the responses were not intended to be a waiver of privilege. At the same time, I have given the responses no weight. Giving them weight in the absence of a waiver would be unfair to the Respondent.

⁵ In addition to the implausible explanations he gave for his use of the Shaw email address and the 604 phone (described below), he also offered an equally implausible explanation of how Avocis came to work for PSC and why he was giving instructions to Avocis on behalf of PSC.

⁶ At some point Mr. Wolsey began using a cell phone with a 778 area code (the "778 phone"). He testified that he did not recall when he changed from the 604 phone to the 778 phone. I find that he was using the 604 phone during the period in question.

The 604 phone was used by at least two law firms, one tax advisory firm and the Court itself to contact or attempt to contact Mr. Wolsey.

[15] Mr. Wolsey told an improbable story about his use of the Shaw email address and the 604 phone. Mr. Wolsey stated that the Shaw email address was not his personal email address and that the 604 phone was not his personal phone. Mr. Wolsey is a pharmacist. He testified that the Shaw email address and the 604 phone belonged to a pharmacy. He testified that he was neither a shareholder, director or officer of the pharmacy nor related to anyone who was. He stated that he was not employed by the pharmacy. He explained that he provided management and systems analysis to the pharmacy but was not paid for his work.⁷

[16] Mr. Wolsey testified that the Shaw email address was a general email address used by the pharmacy for matters that did not relate to customers. He stated that the pharmacy manager, a couple of pharmacy technicians and a delivery person all had access to the Shaw email address. He said that he did not have the password for the Shaw email account so he could only log into the account from the pharmacy itself, and he explained that he did not have access to the pharmacy unless staff members were present. He specifically stated that he would not have accessed the Shaw email address regularly in August, September or October 2014.⁸ Implicit in Mr. Wolsey's testimony is the suggestion that one of the other people who had access to the Shaw email address may have deleted emails sent to him before he saw them. Mr. Wolsey was evasive when asked why he would not have created a private email address for these communications.⁹ He clearly knew how to create and access such an account.¹⁰

[17] Mr. Wolsey testified that the 604 phone was the pharmacy's phone and was used by others at the pharmacy, including the delivery person who would take it with him in his car. Mr. Wolsey explained that the pharmacy used the phone to contact him when they needed assistance.¹¹

⁷ Transcript page 52, line 10 to page 53, line 4; page 118, line 14 to page 119, line 12

⁸ Transcript page 54, line 4 to page 55, line 19; pages 135-139

⁹ Transcript page 142, lines 11 to 19

¹⁰ Transcript page 140, line 18 to page 142, line 10. There was also evidence that Mr. Wolsey was using a gmail account under the alias "Tom Wilson" to communicate with at least some of his professional advisors prior to the October 9, 2014 status hearing (see Exhibit R-15)

¹¹ Transcript page 118, lines 7 to 20; page 119, lines 13 to 19; page 130, line 14 to page 131, line 4

[18] Mr. Wolsey's story is completely improbable. He would have me believe that he provides services to a pharmacy in which he has no financial interest in exchange for shared access to the pharmacy's email address from time to time when he is physically on the premises and access to a cell phone which is also used by the pharmacy's delivery person. More incredibly, he would have me believe that he had no other phone number in the period in question and that he chose to use that shared email address to communicate with his lawyers and professional advisors about his personal tax matters and his court case without any concerns that such private matters would be read by others at the pharmacy.

[19] Not only is Mr. Wolsey's story completely improbable, it is also a story that he mentioned for the first time at the hearing. Nowhere in his affidavit did he provide any of this information. He provided no documentary evidence to support his position and no affidavit evidence from anyone at the pharmacy. I draw an adverse inference from his failure to do so. Mr. Wolsey explained that the pharmacy had closed in June 2015 and that he did not know how to contact anyone from the pharmacy. Mr. Wolsey brought his application in the Fall of 2014. He had plenty of time prior to the pharmacy closing to gather the evidence that he needed on such a key issue.

[20] Finally, certain elements of Mr. Wolsey's story have been proven to be false. The documentary evidence indicates that Mr. Wolsey actively sent and received emails via the Shaw email address in August, September and October, 2014. More importantly, specific key emails that Mr. Wolsey denied having received were shown to have been received by him.

[21] Not only does the foregoing hurt Mr. Wolsey's overall credibility, it also causes me not to believe any of Mr. Wolsey's explanation regarding his access to the Shaw email address, his receipt of emails sent thereto, his access to the 604 phone and his receipt of voicemail messages left thereon. Based on the evidence before me, I find that Mr. Wolsey had unrestricted access to the Shaw email address and the 604 phone, that he regularly used both for communication in the period in question, and that he received any emails sent to the Shaw email address and any voicemails left on the 604 phone during that period.

IV. Has Mr. Wolsey Provided a Reasonable Explanation for His Non-Appearance?

[22] To succeed in having the dismissal of his appeal set aside, Mr. Wolsey must show that he has a reasonable explanation for not attending the October 9, 2014 status hearing. Mr. Wolsey's explanation is that he did not attend the status hearing because he was unaware of it. He states that he was unaware of it because he was:

- a) unaware of the August 27, 2014 status hearing (as a result of which the October 9, 2014 status hearing was set and a timeline was established for Mr. Virk to get off the record);
- b) unaware that Mr. Virk had removed himself from the record; and
- c) unaware of the October 9, 2014 status hearing itself.

[23] None of the above statements is believable. In an appendix to these Reasons, I have set out the details of each communication with Mr. Wolsey's professional advisors, my analysis of those communications and the cross-references to the relevant evidence. The following is a summary of my findings:

- a) August 27, 2014 status hearing: Mr. Virk sent Mr. Wolsey two emails before the August 27 status hearing advising him of that hearing and one email reporting on that hearing. The documentary evidence shows that Mr. Wolsey received all three of these emails. The evidence also shows that Mr. Wolsey communicated with others while ignoring Mr. Virk's attempts to obtain instructions prior to the August 27 status hearing. I find that Mr. Wolsey was well aware of the August 27 status hearing and that he chose not to communicate with Mr. Virk in advance of that hearing.
- b) Getting off the record: Mr. Virk emailed Mr. Wolsey on two occasions seeking his instructions about getting off the record. He then emailed him and told him that he would be getting off the record by a fixed date. He next left him numerous voicemails telling him that he would be getting off the record. He then twice emailed him a notice of intention to cease to act as counsel. Finally, he emailed him a copy of the letter from the Court indicating that he had been removed from the record, an email which there is no doubt that Mr. Wolsey received as he forwarded it to others twice. Based on all of the foregoing, I find that Mr. Wolsey not only knew that Mr. Virk had removed himself as counsel but also had plenty of warning of his intention to do so.

- c) October 9, 2014 status hearing: Mr. Virk emailed Mr. Wolsey advising him that a status hearing was going to be held sometime during a two-week period in October. He later emailed Mr. Wolsey a copy of a September 2, 2014 Court Order establishing the October 9 status hearing. Finally, the Registry left voicemails for Mr. Wolsey on two different occasions reminding him of the October 9 status hearing. Based on all of the foregoing, I find that Mr. Wolsey was aware of the October 9 status hearing.

[24] In order to have the dismissal set aside Mr. Wolsey needs to provide a reasonable explanation for his non-appearance. In light of all of the foregoing, I find that he has effectively provided no explanation whatsoever. An explanation that is entirely without credibility is hardly different than silence. “My dog ate my homework” is only an explanation if you have a dog.

[25] This is not a case where the taxpayer has provided an explanation and where I must determine whether, in light of all of the circumstances, that explanation is reasonable. Had Mr. Wolsey taken the position that he knew about the status hearing but mistakenly thought that someone (Mr. Virk or Mr. Laird perhaps) was going to attend on his behalf, I would have had an explanation that I could have considered. Had he taken the position that he knew about the status hearing but thought that the worst that would happen if he did not attend is that the Court would set the appeal down for hearing, I would again at least have had an explanation that I could have considered. Had he taken the position that he knew about the status hearing but could not afford to retain counsel and hoped that by not attending the status hearing he could delay the appeal until he was in a financial position to retain someone, I would again at least have had an explanation that I could have considered. I am not saying that I would have necessarily set the dismissal aside in any of these circumstances, but at least I would have had an explanation that I could have weighed in making a decision. Mr. Wolsey has not left me with that option.

V. Should I Take a Broader Perspective?

[26] Mr. Wolsey asks me to take a broader perspective. He says that, even if I find that he knew of the October 9 status hearing, I should nonetheless consider whether, in light of all of the circumstances, the dismissal should be set aside.

[27] Mr. Wolsey submits that the reassessments are very large and that it would be unjust to deprive him of his chance to litigate them. I agree that the reassessments are very large. Mr. Wolsey also submits that the appeal is ready for trial, so it would be inappropriate to stop it this close to a decision. I have no evidence to show that Mr. Wolsey was ready for trial in 2014 but I acknowledge that he has now indicated that he is prepared to have me set the matter down for trial peremptorily.

[28] Had Mr. Wolsey presented me with a credible explanation of why he failed to appear, I would have considered whether I should take these broader considerations into account. Without such an explanation, I am not prepared to do so. If I were to set aside the dismissal without any explanation for Mr. Wolsey's non-appearance simply on the basis that he has a lot of money at stake and is ready for trial, what would prevent every other appellant from doing the same thing? Mr. Wolsey ignored an order of this Court and has provided no credible explanation as to why he did so. It is not my role to imagine an excuse for him.

[29] In cases where this Court has considered the amount of money that the taxpayer was disputing, the taxpayer had at least provided a reasonable explanation (*Izumi v. The Queen*;¹² *Speciale v. The Queen*¹³). Even in *GMC Distribution Ltd. v. The Queen*,¹⁴ where the Court placed a great deal of weight on the amount in issue and arguably found in favour of the taxpayer despite finding the taxpayer's explanation for its non-appearance not to be reasonable, the taxpayer at least had a credible explanation; perhaps not a particularly compelling or fulsome explanation, but a credible one.

[30] If I am wrong and I should have taken a broader perspective despite finding that Mr. Wolsey provided no credible explanation for his non-appearance, I would have looked at Mr. Wolsey's conduct between the time his appeal was filed in 2005 and the time it was dismissed at the October 9, 2014 status hearing. I would also have looked at his conduct during the 21 months it has taken for this Application to be heard. Everything about Mr. Wolsey's conduct during these periods screams not of someone who desperately wants to resolve his tax problem, but rather of someone who desperately wants to delay resolving it. Mr. Wolsey has regularly ignored Court-ordered deadlines, has failed to apply to extend those deadlines until forced to do so by either the Court or the Respondent and, both

¹² 2014 TCC 108

¹³ 2012 TCC 236

¹⁴ 2009 TCC 287

before and after the October 9 status hearing, has failed to provide the Court and his counsel with his correct contact information. If I were to take a broader perspective, it would be that described by Justice Campbell with regard to a similar taxpayer in *Jamieson v. The Queen*:¹⁵

...there comes a time when common sense must prevail and room made in the court docket for taxpayers who are earnestly attempting to comply with court orders and have their appeals heard. The Appellant's approach to his appeals prejudices those taxpayers. I must infer from the Appellant's inaction in these appeals and his approach of delaying the matter to infinity, that he has no desire ultimately to have his appeals adjudicated upon by this Court.

VI. Conclusion

[31] Based on all of the foregoing, the Application is denied.

VII. Costs

[32] Costs are awarded to the Respondent. It is my hope that the parties will be able to agree on costs. In endeavouring to reach an agreement, Mr. Wolsey may wish to bear in mind that my strong impression is that his conduct throughout this Application has unnecessarily lengthened the proceedings. Viewed collectively, the series of unfortunate events that necessitated four adjournments of this matter (each shortly before, on the eve of or during the hearing) begin to take on the appearance of intentional delay and an abuse of the Court's goodwill. Mr. Wolsey's surprise attempt to adjourn the hearing a fifth time before me on the morning of the hearing only reinforces that impression. Unless Mr. Wolsey is able to convince me that my impression is wrong, any decision that I am required to issue in respect of costs will reflect that view.

[33] If the parties are unable to reach an agreement, they shall have 30 days from the date of this judgment to make submissions to me on costs.

Signed at Ottawa, Canada, this 24th day of October 2016.

¹⁵ 2012 TCC 144 at paragraph 22

“David E. Graham”

Graham J.

Appendix

Detailed Analysis of Communications

a) In this Appendix, all references to Mr. Wolsey sending or receiving emails are references to his Shaw email address and all references to his receiving voicemail messages are references to the 604 phone.

Pre-June 2014

b) At some point, tax returns were filed for PSC by Avocis. My understanding is that those returns reported some or all of the income in question. The Minister audited the returns and ultimately refused to process them as filed. Instead the Minister issued nil assessments. PSC objected to the nil assessments. The parties asked the Court to hold Mr. Wolsey's appeal in abeyance pending the resolution of the objection.

June 2014

c) A status hearing in Mr. Wolsey's appeal was held on June 10, 2014. At the status hearing the parties asked the Court to continue to hold the appeal in abeyance until PSC's objection could be resolved and advised that that was expected to occur in mid-July. Mr. Virk attended the status hearing on behalf of Mr. Wolsey.

d) As a result of the June 10 status hearing, the Court issued an Order dated June 12, 2014. The Order stated that the next status hearing would be held on August 27, 2014 by telephone conference.¹⁶

e) Mr. Wolsey denies having been aware of the August 27 status hearing.¹⁷

f) On June 17, 2014, Mr. Virk emailed a copy of the June 12 Order to Mr. Wolsey.¹⁸ Mr. Wolsey acknowledged that email with his own email dated June

¹⁶ Affidavit of Ruby Manget dated May 14, 2015 ("Manget #1"), Exhibit "K"

¹⁷ Affidavit of George Wolsey dated November 20, 2014 ("Wolsey #1"), paragraph 6

¹⁸ Exhibit R-4

18, 2014.¹⁹ This was the first time that Mr. Virk notified Mr. Wolsey about the August 27 status hearing.

July 2014

g) By letter dated July 30, 2014, CRA Appeals advised Mr. Singh that PSC's notice of objection was invalid (as one cannot object to a nil assessment), that CRA Appeals had been reviewing the objection "as a courtesy on an informal basis", and that that review was now concluded.²⁰

h) On July 30, 2014, Mr. Virk emailed Mr. Wolsey. He stated that he had been retained to seek to have the appeal held in abeyance pending the resolution of the PSC objection. Since that matter had now been resolved, Mr. Virk indicated that Mr. Wolsey would either have to retain new counsel, represent himself or enter into a new retainer agreement with Mr. Virk.²¹ Mr. Wolsey clearly received this email as he forwarded it to Mr. Singh on July 31.²²

i) As a result of the decision by CRA Appeals, there was no longer any reason for the appeal to be held in abeyance. Any doubt about this was removed by a further letter from CRA Appeals dated July 31, 2014.²³

August 2014

j) On August 11, 2014, Mr. Virk emailed Mr. Wolsey. He reported on a variety of matters. He stated that he had spoken to counsel for the Respondent who confirmed that CRA Appeals was done with the PSC matter. He reminded Mr. Wolsey of the upcoming August 27 status hearing, advised that the Respondent felt that the appeal was ready to be set down for trial, and advised that they had agreed that the matter should be set down for five days in Vancouver. He reminded Mr. Wolsey of his July 30 email and the issues raised therein regarding his representation. Finally, he asked Mr. Wolsey if they could have a meeting. There is no doubt that Mr. Wolsey received this email as he forwarded it to Mr. Singh the same day, seeking his thoughts and suggesting that Mr. Virk's "usefulness here

¹⁹ Exhibit R-5

²⁰ Manget #1, Exhibit "L"

²¹ Exhibit R-6

²² Exhibit R-20

²³ Manget #1, Exhibit "M"

needs to be considered”.²⁴ This was the second time that Mr. Virk made Mr. Wolsey aware of the pending August 27 status hearing.

k) I find it telling that Mr. Wolsey does not respond to Mr. Virk’s July 30 or August 11 emails yet forwards both of them to Mr. Singh. I conclude that Mr. Wolsey was avoiding providing instructions to Mr. Virk.

l) On August 20, 2014, Mr. Virk emailed Mr. Singh. Mr. Virk advised that Mr. Wolsey had not responded to his last email and requested Mr. Singh’s help in contacting Mr. Wolsey. The email emphasized the need to determine Mr. Wolsey’s availability so that trial dates could be set.²⁵ I found Mr. Singh’s indication that he passed this request on to Mr. Wolsey to be unreliable and have placed no weight on it. I find this email to be evidence only of the fact that, as of August 20, Mr. Virk had still not received instructions and was trying hard to correct that situation.

m) The scheduled status hearing was held on August 27, 2014. Mr. Virk attended on behalf of Mr. Wolsey. At the time he attended, he had still not received instructions from Mr. Wolsey.²⁶ Mr. Wolsey did not provide any explanation as to why he would not have provided instructions.

n) At the August 27 status hearing, Mr. Virk advised the Court that he intended to cease to act as counsel for Mr. Wolsey. The Court ordered that Mr. Virk serve and file a notice of intention to cease to act as counsel by September 15, 2014. The Court gave Mr. Wolsey until September 26, 2014 to retain new counsel and have that counsel serve and file a notice of intention to act. Finally, the Court advised that a further status hearing would be held in early October.²⁷

o) It is worthwhile to note at this point that Mr. Wolsey explicitly stated in his affidavit that he did not receive any communications from Mr. Virk from August 27 to October 9, 2014.²⁸ As will be seen below, this is false.

p) On August 27, 2014, following the status hearing, Mr. Virk emailed Mr. Wolsey to report on the status hearing. This was the third time that Mr. Wolsey was made aware of the August 27 status hearing. Mr. Virk confirmed that he still had not heard back from Mr. Wolsey with instructions. Mr. Virk told

²⁴ Exhibit R-17

²⁵ Exhibit R-21

²⁶ Transcript page 243, lines 7 to 13

²⁷ Manget #1, Exhibit “N” and Exhibit R-7

²⁸ Wolsey #1, paragraph 6

Mr. Wolsey that the Respondent had wanted to set the appeal down for trial but that Mr. Virk had “as a courtesy to you” negotiated with the Respondent to provide some time for Mr. Wolsey to retain new counsel. Mr. Virk stated that he would be getting off the record on September 10, 2014, which would give Mr. Wolsey approximately two weeks to find new counsel. The email instructed Mr. Wolsey that he would be self-represented if he did not retain new counsel by September 26. Finally, Mr. Virk advised that the next status hearing would be the week of October 6 or the week of October 13 and that the purpose of that hearing would be to set the appeal down for trial.²⁹ Mr. Wolsey denied receiving this email.³⁰ That was shown to be false when Mr. Singh produced an email string showing that Mr. Singh had, on Mr. Wolsey’s instructions, forwarded Mr. Virk’s email to Mr. Laird seventeen minutes after Mr. Wolsey received it.³¹

September 2014

q) As a result of the August 27 status hearing, the Court issued an Order dated September 2, 2014. The Order set out the matters ordered at the status hearing and specifically stated that the next status hearing would be held on October 9, 2014.³²

r) The Court sent the September 2 Order to Mr. Virk on September 5, 2014.³³

s) On September 5, 2014, Mr. Virk emailed a copy of the September 2 Order to Mr. Wolsey.³⁴ Mr. Wolsey denies receiving that email.³⁵ That email would, of course, have notified him of the October 9 status hearing. I do not believe Mr. Wolsey. There are too many other emails that Mr. Wolsey has falsely denied receiving for him to have any credibility left when he denies receiving this one. Mr. Singh, who was copied on this email, confirmed that he received it.³⁶

t) Sometime between August 27 and September 15, 2014, Mr. Virk left Mr. Wolsey “numerous” voicemail messages advising him that he was going to cease to be counsel of record.³⁷ Mr. Wolsey testified that the 604 phone did not

²⁹ Exhibit R-7

³⁰ Transcript page 181, line 18 to page 182, line 2

³¹ Exhibit R-22

³² Manget #1, Exhibit "N"

³³ Manget #1, Exhibit "N"

³⁴ Exhibit R-8

³⁵ Transcript page 186, lines 16 to 24 and Wolsey #1, paragraph 6

³⁶ Transcript pages 339 to 343

³⁷ Manget #1, Exhibit "O"; Transcript pages 226 - 227

have voicemail on it. I prefer Mr. Virk's testimony to that of Mr. Wolsey and find that the 604 phone did have voicemail. My belief in Mr. Virk's testimony is enhanced by the fact that, as set out below, the Court file shows that the Registry itself left messages for Mr. Wolsey on the 604 phone.³⁸

u) On September 12, 2014, Mr. Virk sent a notice of intention to cease to act as counsel. The letter informed Mr. Wolsey that Mr. Virk's address would therefore cease to be Mr. Wolsey's address for service. The letter was sent to Mr. Wolsey's last known mailing address on Hastings Street in Vancouver. The letter specifically pointed out that Mr. Wolsey's address for service would become the Hastings Street address unless he filed a document with the Court that changed the address.³⁹

v) The Hastings Street address was not a current address for Mr. Wolsey and had not been since April 2012. Mr. Wolsey had not provided Mr. Virk with a current mailing address.⁴⁰ The Hastings Street address was the address that had been on the Court record as Mr. Wolsey's address for service prior to Mr. Virk's appointment. It had been on the Court record because Mr. Wolsey's previous lawyers, Bull Housser & Tupper LLP, had provided it to the Court when they removed themselves from the record in October 2013.⁴¹ In its notice of intention to cease to act, Bull Housser advised Mr. Wolsey that it was providing the Court with the Hastings Street address. Bull Housser stated that it was aware that the address might not be Mr. Wolsey's current address but that it was the only address they had for him as Mr. Wolsey had refused to provide them with an up-to-date address. That letter was emailed to Mr. Wolsey. Mr. Wolsey denies receiving this email but I do not believe him. I find that Mr. Wolsey had been on notice since October 2013 that the Court had an incorrect mailing address for him and did nothing to fix the problem.

w) On September 16, 2014, Mr. Virk emailed his September 12 letter to Mr. Wolsey.⁴² Mr. Wolsey denies receiving this email.⁴³ I do not believe him.

x) Mr. Virk later realized that he had failed to send the notice of intention to cease to act as counsel by registered mail. As a result, later in the day on

³⁸ Manget #1, Exhibits "R" and "S"

³⁹ Exhibit R-11

⁴⁰ Transcript page 221, lines 3 to 11. Mr. Wolsey denies this but I do not believe him.

⁴¹ Manget #1, Exhibit "C"

⁴² Exhibit R-11

⁴³ Transcript page 197, line 19 to page 198, line 4 and Wolsey #1, paragraph 6

September 16, he re-sent the same notice to Mr. Wolsey by registered mail and re-emailed the notice to him.⁴⁴ Mr. Wolsey also denies receiving this email.⁴⁵ I do not believe him.

y) On September 17, 2014, the Court wrote Mr. Virk acknowledging receipt of his notice of intention to cease to act as counsel. The Court specifically stated that the Court's records had been updated and that all future correspondence would be sent directly to Mr. Wolsey.⁴⁶

z) On September 17, 2014, the Court wrote to Mr. Wolsey at the Hastings Street address confirming that a status hearing would be held on October 9 and that the Court would be contacting him on the 604 phone.⁴⁷ Mr. Wolsey did not, of course, receive this letter because the Hastings Street address was not his current address. The registered mail was returned to the Registry on October 1 and, in accordance with the Registry's usual practice, was re-sent by regular mail.⁴⁸ I find that Mr. Wolsey bears sole responsibility for the fact that this letter was not received.

aa) On September 24, 2014, Mr. Virk emailed Mr. Wolsey. He attached the Court's September 17, 2014 letter confirming that Mr. Virk had been removed from the record.⁴⁹ On cross-examination, Mr. Wolsey denied receiving this email.⁵⁰ I do not believe him. Mr. Singh, who was copied on this email, confirms receiving it.⁵¹ More importantly, the documentary evidence clearly shows that Mr. Wolsey not only received this email but also forwarded it to Mr. Singh and Mr. Laird the next day⁵² and forwarded it once again to Mr. Singh and Mr. Laird on October 9.⁵³

October 2014

⁴⁴ Exhibit R-12 and Manget #1, Exhibit "O"

⁴⁵ Transcript page 197, line 19 to page 198, line 4 and Wolsey #1, paragraph 6

⁴⁶ Manget #1, Exhibit "P"

⁴⁷ Manget #1, Exhibit "Q"

⁴⁸ Manget #1, Exhibit "R"

⁴⁹ Exhibit R-13

⁵⁰ Transcript page 200

⁵¹ Transcript pages 339 to 343

⁵² Exhibit R-19

⁵³ Exhibit R-15 (Note: I find that the last two pages of Exhibit R-15 are not the document originally attached to that email. Mr. Singh appears to have attached those two pages in error. A review of all of the evidence shows that the Court's letter of September 17, 2014 attached to Exhibit R-19 was the only document ever attached to that email.)

bb) On October 7, 2014, the Registry called Mr. Wolsey on the 604 phone and left a voicemail message reminding him about the status hearing.⁵⁴ Mr. Wolsey denies having voicemail on that phone and denies having received that message.⁵⁵ I do not believe him.

cc) As described above, on October 9, 2014 at 7:20 a.m. (just hours before the 10:00 a.m. status hearing), Mr. Wolsey forwarded Mr. Virk's September 24 email to Mr. Singh and Mr. Laird. That email attached the Court's September 17 letter acknowledging that Mr. Virk was no longer on the record.

dd) On October 9, 2014, prior to the status hearing, the Registry again called Mr. Wolsey on the 604 phone and again left a voicemail message reminding him about the status hearing.⁵⁶ Mr. Wolsey denies having voicemail on that phone and denies having received that message.⁵⁷ I do not believe him.

ee) The October 9 status hearing was ultimately commenced. Mr. Wolsey was not in attendance. The Court dismissed his appeal for failure to appear.⁵⁸

ff) On October 10, the Court emailed the October 9 Order to Mr. Wolsey. Mr. Wolsey acknowledges receiving this email.⁵⁹ He claims that this is the first time he became aware of the October 9 status hearing. I do not believe him.

⁵⁴ Manget #1, Exhibit "R"

⁵⁵ Transcript page 109, lines 21 to 28; pages 121 to 124

⁵⁶ Manget #1, Exhibit "R"

⁵⁷ Transcript page 109, lines 21 to 28; pages 121 to 124

⁵⁸ Manget #1, Exhibit "R"

⁵⁹ Wolsey #1, paragraph 6 and Exhibit "V"

CITATION: 2016 TCC 236

COURT FILE NO.: 2005-4409(IT)G

STYLE OF CAUSE: GEORGE WOLSEY v. HER MAJESTY
THE QUEEN

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: August 23 and 24 and September 15 and 16,
2016

REASONS FOR JUDGMENT BY: The Honourable Justice David E. Graham

DATE OF JUDGMENT: October 24, 2016

APPEARANCES:

Counsel for the Appellant: Daniel Barker

Counsel for the Respondent: Johanna Russell
Pavanjit Mahil-Pandher

COUNSEL OF RECORD:

For the Appellant:

Name: Daniel Barker

Firm: Barker & Company
Vancouver, British Columbia

For the Respondent:

William F. Pentney
Deputy Attorney General of Canada
Ottawa, Canada