

Docket: 2009-2117(IT)APP

BETWEEN:

SIMON ROY,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Application for extension of time heard on October 20, 2009,
at Montréal, Quebec

Before: The Honourable Justice François Angers

Appearances:

Counsel for the applicant: Emmanuelle Campeau

Counsel for the respondent: Marjolaine Breton

JUDGMENT

The application for an extension of the time within which an appeal under the *Income Tax Act* may be filed regarding the 2000, 2001 and 2002 taxation years is dismissed in accordance with the attached Reasons for Judgment.

Signed at Montréal, Quebec, this 17th day of November 2009.

"François Angers"

Angers J.

Citation: 2009 TCC 573
Date: 20091117
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Respondent.

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REASONS FOR JUDGMENT

Angers J.

[1] This is an application for an extension of time under section 167 of the *Income Tax Act* (the Act) to allow the applicant to appeal to this Court from the decision rendered by the Minister of National Revenue (the "Minister") on December 11, 2007, for the 2000, 2001 and 2002 taxation years.

[2] The Minister sent the applicant notices of reassessment for the 2000 and 2001 taxation years on January 4, 2006, and a notice of assessment for the 2002 taxation year on January 6, 2002. The applicant objected to the reassessments and the assessment and filed his objection to the Minister on March 24, 2006.

[3] According to an affidavit by Teresa Masone, appeals officer for the Canada Revenue Agency (the "CRA"), she reviewed the applicant's grounds for objection between October 18, 2007, and December 11, 2007. On December 11, 2007, Ms. Masone sent the applicant a notice of confirmation regarding the assessments for the 2000, 2001 and 2002 taxation years by registered mail to the address the applicant provided to the CRA. A copy of the record of the applicant's mailing addresses was submitted to evidence (Exhibit I-1) and it includes the applicant's

address for the period of September 20, 2007, to May 12, 2009, which corresponds to the one Ms. Masone used to send the notices of confirmation by registered mail.

[4] On January 10, 2008, the registered letter in question was returned to the CRA marked "unclaimed."

[5] As for the applicant, he testified on the issues he had to overcome, particularly in the fall of 2007, following a series of events I should not list because his movements must remain confidential. I will simply state that the applicant had to move many times, including a first time on September 1, 2007 (Exhibit R-3). On November 5, 2007, the applicant went to a Canada Post office with a notary and signed a change of address notice (Exhibit R-2) to have his mail sent to him for a period of around six months. However, this change of address notice only applied to his numbered company and not to him personally. Exhibit R-4 is a T-5 for 2008, and indicates a new address for the applicant, but it is not considered a change of address with the CRA. Even if the document mentions the CRA, it is a document established by a placement company and not the CRA.

[6] According to the applicant, he informed Revenue Québec of his change of address in December 2007 and he thought that Revenue Canada would be informed at the same time. In support of this claim, the applicant noted that the change of address forms were marked Québec and Canada.

[7] The applicant had a conversation with his tax specialist in April 2008 for an update on his tax affairs. He then went to Europe for two months in the summer of 2008 and his notary collected his mail at his old address. It was only in March 2009 that he learned things were not going well with his tax affairs. He contacted a Revenue Québec representative and had an appointment in May. He was told to address the CRA and then this Court, which led to this application being filed on June 25, 2009.

[8] Under subsection 165(3) of the Act, upon reception of a notice of objection, the Minister must review the reassessment with care, he vacates, confirms or amends it or establishes a reassessment and then advises the taxpayer of his decision in writing. There is no requirement that the Minister must notify the taxpayer of his decision personally or provide evidence that the taxpayer has received it. As the Federal Court of Appeal stated, per Stone, J. in *Bowen v. Canada*, [1991] F.C.J. No. 1054, the Minister used the address the taxpayer provided and he is not required to make further inquiries. He added: "Moreover, a requirement for the receipt of the

notification would be difficult if not totally unworkable from an administrative standpoint."

[9] In this case, the evidence presented shows that the Minister did what was required pursuant to subsection 165(3) of the Act and it was not due to an omission on his part that the applicant was unable to file an appeal within the prescribed time.

[10] For the Court to allow such an application, the applicant must meet the requirements at subsections 167(1) and 167(5) of the Act:

167(1) Extension of time to appeal -- Where an appeal to the Tax Court of Canada has not been instituted by a taxpayer under section 169 within the time limited by that section for doing so, the taxpayer may make an application to the Court for an order extending the time within which the appeal may be instituted and the Court may make an order extending the time for appealing and may impose such terms as it deems just.

167(5) When order to be made – No order shall be made under this section unless:

- (a) the application is made within one year after the expiration of the time limited by section 169 for appealing; and
- (b) the taxpayer demonstrates that:
 - (i) within the time otherwise limited by section 169 for appealing the taxpayer
 - (A) was unable to act or to instruct another to act in the taxpayer's name, or
 - (B) had a *bona fide* intention to appeal
 - (ii) given the reasons set out in the application and the circumstances of the case, it would be just and equitable to grant the application,
 - (iii) the application was made as soon as circumstances permitted, and
 - (iv) there are reasonable grounds for the appeal.

[11] The application must therefore be presented in the year following the expiry of the time limit to appeal under section 169 of the Act (90 days). However, in this case, the time limit ended on March 10, 2008, and the year in which the taxpayer could

have made an application ended on March 10, 2009. The application for an extension was made on June 25, 2009, outside the time limit.

[12] The case law tells us that this is a strict time limit that deprives Court of any discretionary power when the application is filed outside the one-year time limit provided under paragraph 167(5)(a) of the Act.

[13] Even if the applicant's particular case warrants the Court's sympathy and even though he took steps to communicate his changes of address, he still did not make sufficient efforts to inform the CRA of his new mailing address.

[14] Although the applicant may have acted with some diligence, in this case the error was not that the taxpayer believed, reasonably but mistakenly, that he validly instituted an appeal as was the case in *Hickerty v. R.*, [2007] T.C.J. No. 312 or *Cheam Tours Ltd. v. Minister of National Revenue*, [2008] 4 C.T.C. 2001.

[15] For all these reasons, I cannot allow the application.

Signed at Montréal, Quebec, this 17th day of November 2009.

"François Angers"

Angers J.

Translation certified true
on this 8th day of December 2009.

Elizabeth Tan, Translator

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APPEARANCES:

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Counsel for the respondent: Marjolaine Breton

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