

Docket: 2006-3464(IT)I

BETWEEN:

W. DAVE SLOMAN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal called for hearing on July 7, 2010, at Edmonton, Alberta
And Reasons for Judgment rendered orally from the Bench

Before: The Honourable Justice G. A. Sheridan

Appearances:

For the Appellant:

Neither the Appellant nor
anyone authorized by him
to appear on his behalf
appeared

Counsel for the Respondent:

Marla Teeling

JUDGMENT

Whereas the Appellant had been granted leave to renew, on the date set down for the hearing of his appeals, his request for the adjournment made on June 30, 2010 and denied by the Court on July 2, 2010;

And whereas, although duly notified of the time and place of the hearing, the Appellant did not appear and did not notify the Court of his authorization of any other person to appear on his behalf as his agent;

And the appeals having been called for hearing and counsel for the Respondent having moved for dismissal of the appeals as a consequence of the Appellant's failure to appear;

The appeals from the reassessments made under the *Income Tax Act* for the 1997, 1998, 1999, 2002 and 2003 taxation years are dismissed pursuant to section 18.21 of the *Tax Court of Canada Act* for the reasons set out in the transcript of the proceedings on July 7, 2010 attached hereto.

Signed at Ottawa, Canada, this 26th day of July 2010.

“G.A. Sheridan”

Sheridan J.

CITATION: 2010 TCC 373

2006-3464(IT)I

BETWEEN:

W. DAVE SLOMAN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

**TRANSCRIPT OF
REASONS FOR JUDGMENT**

Let the attached transcript of the Reasons for Judgment delivered orally from the Bench at Edmonton, Alberta on July 7, 2010 be filed.

"G.A. Sheridan"

Sheridan J.

Signed at Ottawa, Canada, on July 26, 2010.

TAX COURT OF CANADA

Court Number 2006-3464(IT)1

BETWEEN:

W. DAVE SLOMAN
Appellant

- and -

HER MAJESTY THE QUEEN
Respondent

PROCEEDINGS

July 7, 2010

Courts Administration Service
Edmonton, Alberta

Before the Honourable Madam Justice Sheridan

Volume 1

Sherry Sloman, Mrs.,

For the Appellant

M. Teeling, Ms.,

For the Respondent

J. Sorvisto, Ms.,

Court Registrar

D. J. Halvorsen, CSR(A)

Court Reporter

Table of Contents

	<u>PAGE</u>
Submi ssi on by Mrs. Sloman	3
Submi ssi on by Ms. Teeling	8
Rul i ng	10
Appl i cati on by Ms. Teeling	11
Rul i ng	12
Certi fi cate of Transcript	14

(PROCEEDINGS COMMENCED AT 10:06 A.M.)

THE REGISTRAR: Court is resumed. The Court calls file 2006-3464 (IT)I between W. Dave Sloman and Her Majesty the Queen. Mrs. Sloman is appearing on behalf of the Appellant and Ms. Teeling is appearing on behalf of the Respondent.

JUSTICE SHERIDAN: Good morning, Mrs. Sloman.

MRS. SLOMAN: Good morning.

JUSTICE SHERIDAN: Good morning, counsel.

MS. TEELING: Good morning.

JUSTICE SHERIDAN: Well, Mrs. Sloman, Mr. Sloman is not here.

MRS. SLOMAN: No.

JUSTICE SHERIDAN: And it's his appeal.

MRS. SLOMAN: Pardon me?

JUSTICE SHERIDAN: I say it's his appeal.

MRS. SLOMAN: Yes.

JUSTICE SHERIDAN: So what can you tell me?

MRS. SLOMAN: Well, the reason he is not here is because he is working. Work has been -- jobs have been few and far between lately so he can't afford not to take one when it's offered, and last week, the cellar flooded and my paperwork got all wet so I have to redo all the paperwork.

JUSTICE SHERIDAN: And so what are you asking me?

MRS. SLOMAN: Well, I would like a continuance, adjournment or whatever, a few more days, like, to get this stuff sorted.

JUSTICE SHERIDAN: Okay, so what you are asking the Court is you would like this put off, the appeal from -- that was supposed to be heard today, you would like it put off till a later time so that you can have the necessary --

MRS. SLOMAN: Yes.

JUSTICE SHERIDAN: -- paperwork --

MRS. SLOMAN: And I won't make the mistake of putting them back there again.

JUSTICE SHERIDAN: And what is it you are saying happened?

MRS. SLOMAN: Well, we have a -- it's not a basement so much as it's a cellar below our house, that's where the furnace is and the hot water tank. And in 10 years, it's been perfectly dry. And then all of a sudden, it wasn't.

And the town has been putting in new storm drains because downtown floods every spring, and we have had a lot of rain, it's been water running in the street. So I'm guessing they have overflowed the sewer and it backed up.

JUSTICE SHERIDAN: Where do you live?

MRS. SLOMAN: Redwater.

JUSTICE SHERIDAN: I guess the name of -- the fact it's Redwater, it's running, is it, quite a bit of water in Redwater?

MRS. SLOMAN: Well, actually, no, the river is a long way from the town. Doesn't even go through the town.

JUSTICE SHERIDAN: All right. Well, I will hear from counsel unless you have anything else you would like to tell me at this point.

MRS. SLOMAN: No. I can show you, this was the books where I was keeping -- doing all the paperwork in, and see, it's all wet.

JUSTICE SHERIDAN: All right. Well, you see, I understand too, Mrs. Sloman, that last week -- it was some time last week, and I'm sure I will hear this from counsel, but it was some time last week that Mr. Sloman had called the Court to say he wanted -- he was seeking an adjournment and he was told by the Chief Justice, I think it was, before whom his request was put --

MRS. SLOMAN: Yeah.

JUSTICE SHERIDAN: He was told that he needed to furnish some kind of proof that this had -- this

sewage back-up or water problem in any case damaging these documents had in fact occurred.

MRS. SLOMAN: So was I supposed to bring all of them to Court?

JUSTICE SHERIDAN: I'm not saying that, I'm just saying that that's what the background of this is. Correct?

MRS. SLOMAN: Well, I don't know, he talked to her and he told me that -- he said oh, they don't believe that the paperwork got wet and you still have to go to Court.

So beyond that, I don't know. I didn't hear the conversation. And he has a tendency to only hear what he wants to hear and then he tells me only what he wants me to hear.

JUSTICE SHERIDAN: Yes, well, and I understand you are the messenger this morning, you are not --

MRS. SLOMAN: I'm the messenger.

JUSTICE SHERIDAN: So what -- and this is -- are you as well as being a messenger the bookkeeper? Is it you who is making these records?

MRS. SLOMAN: Well, yeah, it's me who is making them because he won't hire someone who is qualified to do it to do it, or he wouldn't when he could afford to hire someone to do it, even though I continuously told

him, I can't do this.

You know, if the books are already there, I can probably fill in, you know, the next few months, but I don't know about calculating depreciation and, you know, interest rates on his loans and all that sort of stuff. Like so I told him, I can't do this.

JUSTICE SHERIDAN: But are these your working papers of some kind?

MRS. SLOMAN: Yeah, well, this is -- this is my answer to a set of books. I wrote down the income and all the expenses and then subtracted one from the other.

JUSTICE SHERIDAN: And what about the other papers?

MRS. SLOMAN: Well, I have photocopied this. The last gentleman I talked to three years ago when we were supposed to come, he had said I needed three copies of everything. So I had copies of all these pages. I did those in pencil so they didn't wash away. And then I had three copies of the receipts.

But it was -- it was these papers that were on the bottom of the box, the photocopies from these, plus the photocopies with the receipts that got the worst of the damage.

The receipts, most of them, I

can pull them apart and still read them. But they are spread all over the house, making -- drying out.

JUSTICE SHERIDAN: All right. That's fine. And please have a seat.

MRS. SLOMAN: Okay.

JUSTICE SHERIDAN: Counsel?

MS. TEELING: Good morning, Your Honour.

The Respondent's position with respect to this renewed adjournment request is that the order of the Chief Justice was quite clear in denying the initial request and spelled out that the Appellant needed to appear on today's date and to bring proof such as an insurance report or an insurance claim to satisfy the Court that this unfortunate event had in fact occurred, and it is our position that the Appellant has done neither of those set of orders contained within the letter issued from the Tax Court.

I will give a brief history of this file. The underlying appeal deals with assessments pursuant to subsection 152 sub 7 of the *Income Tax Act*. The Appellant did not file tax returns for the years in question. The years that the appeal deals with are 1997 through '99, 2002 and 2003, which is in and of itself quite dated.

This matter was set down for hearing three years ago, and adjourned to allow the Appellant time to amass his books and records. It was set down peremptorily for this hearing date and now we have another late-in-the-day adjournment request that the Chief Justice explicitly denied and required quite specific proof to be delivered to the Court to satisfy the Court that the adjournment request should be granted, and it is our submission in this case that that bar has not been met.

The Appellant's spouse is not listed as his legal representative on the file, and this matter has been set previously.

The Crown was prepared to proceed today. I have a witness present in the courtroom, and the Crown is at some disadvantage in this matter, both in having prepared the matter for hearing twice now, but secondly, given the age of the files and the years under appeal, further delay could prejudice the Respondent in being able to defend the reassessments.

And for those reasons, I would request that the adjournment request be denied again. Thank you.

JUSTICE SHERIDAN: Thank you. Mrs. Sloman, do you

have anything to say in response to that?

MRS. SLOMAN: No. I don't think so.

JUSTICE SHERIDAN: No?

Well, counsel, I'm persuaded by your argument. I think this has been -- in the circumstances of the request for the adjournment, I just don't believe it's justified to grant it. And I agree the matter has been adjourned for some three years waiting for Mr. Sloman to get his books and records together.

I'm not impressed that he himself didn't show up today. I can appreciate he may have had a job opportunity, but nonetheless, he was aware of this date quite some time ago, and I think it was even more wrong of him to send you, Mrs. Sloman, I don't blame you for this, but wrong of him to send you when he should have -- he knew if he -- from the Chief Justice's direction he was to be here and to provide proof, and when he -- this was explained to him by the Registry officer, he hung up on her and then she followed up with a further letter to clarify the conditions for the -- that would need to be fulfilled if the adjournment was granted and he has effectively thumbed his nose at that.

So I'm not prepared to grant

the adjournment requested, especially since the Crown is ready to proceed, and I agree the taxation years under appeal are getting quite dated and so I'm ready to hear from you, counsel.

And you are right,

Mrs. Sloman is not the agent for the Appellant.

Now, Mrs. Sloman, you're welcome to stay. You might as well if you want to hear what's going to be said, but we are -- effectively, this matter is going to go ahead.

MRS. SLOMAN: Okay.

MS. TEELING: Given that the Appellant is not in attendance today, and given the representations by Ms. Sloman this morning he is not intending to appear, the Respondent moves to have this matter dismissed pursuant to section 18.21 of the *Tax Court of Canada Rules* -- sorry, *Act*.

And I'm not sure if the Court wishes to wait the 30 minutes that they typically do, given I guess with the previous discussion as well as the knowledge that Mr. Sloman does not intend to appear, I -- I do not -- in my submission, I don't think that that is necessary or required.

JUSTICE SHERIDAN: Well, no, I don't see any need for the delay when Mrs. Sloman has told us that Mr. Sloman

is at work and is not intending to come here, so I think he has made his position clear with his intentions on proceeding today, and we have not been prepared to fulfill the conditions for the adjournment, so the Respondent's application for the appeal to be dismissed for failure to appear is granted and the order will go accordingly.

But Mrs. Sloman, once that order is issued dismissing the appeal, there will be a 30-day period within which he can appeal that if he chooses, but he will have to get on it if he plans to do that.

MRS. SLOMAN: Okay.

JUSTICE SHERIDAN: And furthermore will have to justify the appeal.

MRS. SLOMAN: Okay.

MS. TEELING: Madam Justice, do you -- given the fact that the Respondent has prepared for this hearing on two separate occasions and that the direction from the Chief Justice was quite clear as to what was to go on, the Respondent would seek an order of costs in having to attend today only to make an application to dismiss for want of prosecution.

JUSTICE SHERIDAN: Yes, I appreciate that, counsel, but this is an informal procedure matter and I'm not

prepared to make such an order this morning.

MS. TEELING: Thank you.

JUSTICE SHERIDAN: Thank you.

(PROCEEDINGS CONCLUDED AT 10:20 A.M.)

CERTIFICATE OF TRANSCRIPT

I, the undersigned, hereby certify that the foregoing pages are a true and faithful transcript of the proceedings taken down by me in shorthand and transcribed from my shorthand notes to the best of my skill and ability.

Dated at the City of
Edmonton, Province of Alberta, this 7th day of July,
2010.

D. J. Halvorsen, CSR(A), RPR
Court Reporter/Examiner