

BETWEEN:

ROMAN MINIOTAS O/A ROMEO'S PLUMBING & HEATING,
Applicant,

and

HER MAJESTY THE QUEEN,
Respondent.

Application heard on November 30, 2010 at Winnipeg, Manitoba
By: The Honourable Justice Judith Woods

Appearances:

For the Applicant: The Applicant himself

Counsel for the Respondent: Nalini Persaud

ORDER

Upon application for an order extending the time within which an appeal in respect of assessments made under the *Income Tax Act* for the 2001 and 2002 taxation years may be instituted, it is ordered that:

1. the time within which an appeal may be instituted is extended to the date of this Order, and
2. the notice of appeal, received with the application, is deemed to be a valid notice of appeal instituted on the date of this Order.

Signed at Toronto, Ontario this 26th day of January 2011.

“J. M. Woods”

Woods J.

Citation: 2011 TCC 43
Date: 20110126
Docket: 2008-3799(IT)APP

BETWEEN:

ROMAN MINIOTAS O/A ROMEO'S PLUMBING & HEATING,
Applicant,

and

HER MAJESTY THE QUEEN,
Respondent.

REASONS FOR ORDER

Woods J.

[1] In this application, Roman Miniotas seeks an extension of time to institute an appeal to this Court. The application is in respect of assessments made under the *Income Tax Act* for the 2001 and 2002 taxation years.

[2] When this application was originally filed, the applicant was represented by his accountant, David Fox. However, Mr. Fox became ill and died before the application was heard.

[3] The applicant informed the Court that he has had difficulty finding new representation and several adjournments have been requested. When the matter came before me for the second time, I refused the adjournment and the application was heard with the applicant representing himself.

[4] Subsection 167(5) of the *Act* sets out several requirements that must be satisfied before an application of this nature may be granted. It reads:

167(5) 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.

[5] The respondent submits that a number of these requirements have not satisfied.

Relevant events

[6] A synopsis of the relevant events is set out below.

[7] On July 25, 2005, the Minister issued reassessments for the applicant's 2001 and 2002 taxation years.

[8] On October 24, 2005, the applicant filed a notice of objection to the reassessments.

[9] On October 25, 2006, the Minister issued new reassessments for the 2001 and 2002 taxation years.

[10] On January 22, 2007, the applicant filed a notice of objection to the new reassessments.

[11] On April 19, 2007, the Minister confirmed the new reassessments.

[12] On October 3, 2007, the applicant sent a letter which appears to be another objection. The letter is not addressed to anyone in particular but it was received by the Canada Revenue Agency (CRA).

[13] On October 24, 2007, the applicant sent another letter which was not

addressed to anyone. It was also received by the CRA. The body of this letter is reproduced below:

We sent our appeal on October 3, 2007 to where we believed was the right division. We have been informed that it has to go to this division, and we would ask that the fee be waived for monetary reasons. We enclose the objections to the appeals court which we sent in, in good faith, within the time limit.

We are choosing the informal procedure for our appeal.

[14] On May 27, 2008, the applicant sent a letter addressed to this Court at its Winnipeg location at 363 Broadway. It appears that the applicant made a mistake in delivering this letter because it was also received by the CRA who forwarded it to the Court. It is worth mentioning that the CRA's offices are also on Broadway in Winnipeg.

[15] In this letter, the applicant submits that the earlier letter of October 24, 2007 was properly addressed and he states that the envelope of the earlier letter is included in support. The applicant surmises that the letter had simply been dropped off at the wrong address.

[16] On October 24, 2008, the Court sent a letter to the applicant requesting further information in order to process the appeal.

[17] On November 9, 2008, the applicant responded to this letter and indicated that everything would be sent again to the Court.

[18] On November 24, 2008, the applicant sent a letter to the Court which states: "As per your instructions, we are requesting an extension in time for filing an appeal."

Discussion

[19] By way of background, I can only surmise that this entire situation has been very frustrating for both parties.

[20] Except for the final piece of correspondence on November 24, 2008, it appears that all of the correspondence from the applicant was prepared by his accountant, Mr. Fox. Unfortunately, we were not able to have the accountant's explanation of events.

[21] One thing is fairly clear from the correspondence. It is that the accountant

believed that the CRA and the Tax Court of Canada were divisions of the same government department. It appears that this led the accountant to believe that it was not material as to where the notice of appeal was delivered. Unfortunately, this is a common misconception among persons who wish to appeal to this Court under the informal procedure.

[22] In the reply, the respondent raises four grounds for objecting to this application. Each of these will be considered below.

Statutory time limit

[23] The respondent submits that the application to extend time was made on November 24, 2008, which is beyond the 15 month deadline imposed by s. 167(5)(a) of the *Act*.

[24] This submission is correct if the application to extend time was first made on November 24, 2008. The Court has no discretion to extend the statutory deadline.

[25] That is not the end of the matter, however. The question remains as to whether any of the prior correspondence could properly be considered an application to extend time that was filed with the Court within the 15 month deadline.

[26] It is appropriate, in my view, for the Court to view applications to extend time compassionately. It is desirable that taxpayers have their appeals adjudicated on the merits to the extent practicable and within the legislative requirements of s. 167(5). Unfortunately, many taxpayers, and even their advisers, have difficulty in following the proper procedures to institute an appeal, even when these procedures are communicated to the taxpayer as they were in this case.

[27] Turning to the relevant facts, it appears that the accountant sent two letters addressed to the Court that were within the 15 month deadline for applying for an extension of time. These letters were dated October 24, 2007 and May 27, 2008. For reasons that are not at all clear, both of these letters found their way to the CRA. Unfortunately, it is now too late to know the background to this as the person responsible has died.

[28] In all the circumstances of this case, it would be appropriate to give the benefit of the doubt to the applicant and consider that the letter dated October 24, 2007 is a validly filed application for an extension of time to appeal.

[29] In reaching this conclusion, I acknowledge that the letter does not specifically request an extension of time. However, this is not necessarily fatal. The letter, which is reproduced above, makes reference to prior objections to the appeals court being sent within the time limit. A plausible interpretation of this statement is that the accountant was aware that the deadline had passed and he was requesting that the appeal be filed in any event. If this interpretation is correct, then the letter could reasonably be considered to be an application to extend time to appeal.

[30] Another difficulty is that this letter was never received by the Court until after the 15 month deadline had passed. Subsection 18.15(2) of the *Tax Court of Canada Act* deems an originating document to be filed on the day that it is received by the Registry.

[31] I would note that the material before me strongly suggests that the envelope containing the letter of October 24, 2007 was addressed to the proper address at the Court. For some unexplained reason, it found its way to the CRA offices a few blocks away. It appears that the CRA returned the letter to the applicant (not to the accountant) and that the applicant did not realize that it had not been accepted.

[32] The CRA cannot be faulted for the assistance that it provided in this case. However, if the CRA had forwarded the October 24, 2007 letter to the Court (as it had been addressed) rather than sending it back to the applicant, it is very likely that this matter would not have been so far off track. The Registry of the Court has established procedures to provide assistance to taxpayers in situations such as this. I would also comment that there is no prejudice to the respondent as the CRA was on notice that the applicant wished to appeal.

[33] In the unusual circumstances of this case, it is reasonable in my view to consider that the letter of October 24, 2007 was received by the Court shortly after it had been received by the CRA.

Is an extension just and equitable?

[34] The respondent submits that it would not be just and equitable to grant the application and therefore the application should be denied by virtue of s. 167(5)(b)(ii).

[35] The legislation requires that the applicant demonstrate that it is just and equitable to grant the application. This requirement has been satisfied in my view. The applicant entrusted this matter to his accountant, and the accountant made many

attempts, albeit clumsy ones, to file a valid appeal. The amount at stake for the applicant is significant, \$30,000 plus penalties and interest, and this weighs in favour of granting the application.

Was application made as soon as circumstances permitted?

[36] The respondent submits that the condition set out in s. 167(5)(b)(iii) is not satisfied because the applicant has not demonstrated that the application was made as soon as circumstances permitted.

[37] The application was sent on October 24, 2007, which was approximately six months after the confirmation and three weeks after the applicant attempted to file a further notice of objection. We do not know why the accountant waited this long. I am prepared to give the applicant the benefit of the doubt concerning this issue, since the person who had carriage of this matter cannot now tell his side of the story.

Are there reasonable grounds for the appeal?

[38] The respondent submits that the applicant has not demonstrated that there are reasonable grounds for the appeal.

[39] I do not agree with this submission. It appears that the assessments made a number of adjustments to revenue and expenses related to the applicant's plumbing and heating business. Included with the material filed by the applicant were detailed explanations for the appeal which had been prepared by the accountant. These explanations could have been more clearly set out, but they are sufficient to satisfy me that the applicant may have a legitimate complaint against the assessments. I conclude there are reasonable grounds for an appeal.

Conclusion

[40] The application is allowed, and an order will be issued which extends the time to institute the appeal to the date of the order and which deems the letter dated October 24, 2007 to be a validly instituted notice of appeal.

[41] Finally, I would comment that this conclusion has been a difficult one and the applicant has been given every benefit of the doubt in order that he is afforded the right to have his appeal heard on the merits.

[42] Having been afforded this opportunity, I expect Mr. Miniotas to be properly

prepared for the hearing of the appeal when it is scheduled. The respondent has a legitimate interest in having this appeal decided as soon as possible.

Signed at Toronto, Ontario this 26th day of January 2011.

“J. M. Woods”

Woods J.

CITATION: 2011 TCC 43

COURT FILE NO.: 2008-3799(IT)APP

STYLE OF CAUSE: ROMAN MINIOTAS O/A ROMEO'S
PLUMBING & HEATING and HER
MAJESTY THE QUEEN

PLACE OF HEARING: Winnipeg, Manitoba

DATE OF HEARING: November 30, 2010

REASONS FOR ORDER BY: The Honourable Justice J. M. Woods

DATE OF ORDER: January 26, 2011

APPEARANCES:

For the Applicant: The Applicant himself

Counsel for the Respondent: Nalini Persaud

COUNSEL OF RECORD:

For the Applicant:

Name: N/A

Firm:

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