

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20110901

Docket: A-1-11

Citation: 2011 FCA 241

**CORAM: SHARLOW J.A.
DAWSON J.A.
MAINVILLE J.A.**

BETWEEN:

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Appellant (Defendant)

and

DEREK PRUE

Respondent (Plaintiff)

Dealt with in writing without appearance of parties.

Judgment delivered at Ottawa, Ontario, on September 1, 2011.

**REASONS FOR JUDGMENT BY:
CONCURRED IN BY:**

**SHARLOW J.A.
DAWSON J.A.
MAINVILLE J.A.**

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REASONS FOR JUDGMENT

SHARLOW J.A.

[1] The Minister of Public Safety and Emergency Preparedness has appealed the judgment of Justice Mosley dated December 7, 2010 (2010 FC 1234). That judgment allowed the appeal of the respondent Mr. Prue from the decision of the Minister to uphold a notice of ascertained forfeiture issued under the *Customs Act*, R.S. 1985, c. 1 (2nd Supp.), and required the parties to bear their own costs. Mr. Prue has cross-appealed the costs award.

[2] According to Justice Mosley's reasons, the notice of ascertained forfeiture relates to Mr. Prue's undeclared importation of a vehicle in 2001. The notice was served on Mr. Prue on May 8,

2002. The amount of the ascertained forfeiture was \$18,178.61, an amount that would bear interest until paid. Mr. Prue appealed to the Minister on a timely basis pursuant to sections 129(d) and 131 of the *Customs Act*. His notice of appeal was misplaced for three and one-half years, with the result that it was not until December 13, 2005 that the Minister made a decision to confirm the ascertained forfeiture. The decision was not communicated to Mr. Prue until March of 2008 through no fault of the Minister.

[3] The closing paragraphs of Justice Mosley's reasons summarized the basis upon which he quashed the Minister's decision to confirm the notice of ascertained forfeiture:

[45] It is apparent that both parties involved in this matter have not diligently observed their responsibilities. Mr. Prue was obliged to declare the vehicle on bringing it into Canada which he failed to do. In other circumstances, I would have had little difficulty in finding that the seizure and forfeiture of the vehicle or the forfeiture of its assessed value was warranted.

[46] But Mr. Prue was entitled pursuant to s. 131(1) of the *Customs Act*, to receive reasons for the Minister's decision on his appeal of the forfeiture within a time period that is "reasonably possible having regard to the circumstances". That did not happen due to an error on the part of the Minister's officials in misplacing the plaintiff's request for a decision. This caused a three and a half-year delay in providing the plaintiff with reasons for the notice of ascertained forfeiture.

[47] There are no circumstances in this case which justify a delay of three and a half years in making a decision and providing reasons to Mr. Prue. I find that there was a failure to comply with s. 131(1), that Mr. Prue was prejudiced by that failure and was denied natural justice. Consequently, I find in his favour.

[48] In the particular circumstances of this case, I will not award costs to Mr. Prue despite his success in the outcome. As I have found above, the ascertained forfeiture was reasonable. But for the error on the part of the Minister to consider his request to review the forfeiture in a timely manner, Mr. Prue would have been liable for that amount.

[4] Subsection 131(1) of the *Customs Act* reads in relevant part as follows (my emphasis):

131. (1) After the expiration of the thirty days referred to in subsection 130(2), the Minister shall, as soon as is reasonably possible having regard to the circumstances, consider and weigh the circumstances of the case and decide

131. (1) Après l'expiration des trente jours visés au paragraphe 130(2), le ministre étudie, dans les meilleurs délais possible en l'espèce, les circonstances de l'affaire et décide si c'est valablement qu'a été retenu, selon le cas : [...]

[5] The Minister's memorandum of fact and law was served and filed on April 15, 2011. At that time, Mr. Prue was represented by counsel. Shortly thereafter, Mr. Prue served the Minister with a notice of intention to act in person.

[6] Mr. Prue was obliged by Rule 346(2) of the *Federal Courts Rules*, SOR/98-106, to file his memorandum of fact and law by May 16, 2011, but failed to do so. Therefore, he is in default.

[7] The Minister was obliged by Rule 347 to serve and file a requisition for hearing within 20 days after service of Mr. Prue's memorandum of fact and law or 20 days after the expiration of the time for service of the respondent's memorandum of fact and law, whichever was earlier. Since Mr. Prue did not file a memorandum of fact and law, the time for filing the requisition for hearing expired on June 6, 2011. The Minister did not file a requisition by that date, and so the Minister is also in default.

[8] On July 12, 2011, a notice of status review was issued because no requisition for hearing had been filed within 180 days of the issuance of the notice of appeal. The notice of status review

required Mr. Prue to file, within 30 days, “representations stating the reasons why default judgment should not be entered”. The representations were to include “a justification for the delay and a proposed timetable for completion of the steps necessary to advance the proceedings in an expeditious manner.” Mr. Prue filed no representations.

[9] According to the notice of status review, the Minister was entitled to serve and file representations within 10 days after being served with the representations of Mr. Prue. Although Mr. Prue filed nothing, the Minister has filed representations suggesting that this Court make an order dismissing Mr. Prue’s cross appeal and scheduling the Minister’s appeal for hearing as soon as possible.

[10] In my view, that is a reasonable suggestion and I would accept it.

“K. Sharlow”

J.A.

“I agree
Eleanor R. Dawson J.A.”

“I agree
Robert M. Mainville J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-1-11

STYLE OF CAUSE: Minister of Public Safety and Emergency
Preparedness v. Derek Prue

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: SHARLOW J.A.

CONCURRED IN BY: DAWSON J.A.
MAINVILLE J.A.

DATED: September 1, 2011

WRITTEN REPRESENTATIONS BY:

Kerry E. S. Boyd FOR THE APPELLANT (DEFENDANT)

Derek Prue FOR THE RESPONDENT (PLAINTIFF)
(SELF REPRESENTED)

SOLICITORS OF RECORD:

Myles J. Kirvan FOR THE APPELLANT (DEFENDANT)
Deputy Attorney General of Canada

N/A FOR THE RESPONDENT (PLAINTIFF)
(SELF REPRESENTED)