

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20190531**

**Docket: A-310-18**

**Citation: 2019 FCA 162**

[ENGLISH TRANSLATION]

**CORAM: GAUTHIER J.A.  
RIVOALEN J.A.  
LOCKE J.A.**

**BETWEEN:**

**GINETTE LAMONTAGNE**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**and**

**SUN LIFE FINANCIAL DISTRIBUTORS  
(CANADA) INC.**

**Intervener**

Motion in writing disposed of without appearance of parties.

Order delivered at Ottawa, Ontario, on May 31, 2019.

**REASONS FOR ORDER:**

**LOCKE J.A.**

**CONCURRED IN BY:**

**GAUTHIER J.A.  
RIVOALEN J.A.**

**Federal Court of Appeal**



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**REASONS FOR ORDER**

**LOCKE J.A.**

[1] The respondent is moving to have the appeal of the decision rendered by the Tax Court of Canada (TCC) in this case dismissed for delay and for absence of any reasonable chance of

success. For the reasons that follow, I would allow the respondent's motion and dismiss the appeal with costs.

[2] The appeal was brought on September 28, 2018 by the filing of a notice of appeal. After the appellant filed a copy of the agreement on the contents of the appeal book on October 29, 2018, the next step was the filing of the appeal book. The original time for doing so was 30 days from the filing of the agreement, that is, November 28, 2018. The respondent agreed to the time being extended by 15 days, to December 13, 2018.

[3] On December 12, 2018, the appellant requested a second extension of time for filing the appeal book, citing several missing or incomplete documents and the approaching holiday season, during which time the print shop she dealt with would be closed. The respondent did not oppose that second extension. On January 21, 2019, Justice Rivoalen granted an extension to February 1, 2019.

[4] On January 29, 2019, the appellant requested a third extension of time for filing the appeal book, this time alleging computer problems and the fact that a number of documents were still missing or incomplete. The respondent did not oppose this third extension, but indicated that he was of the opinion that the appellant should be able to complete the appeal book by February 22, 2019 at the latest, since the TCC had already sent her all of the exhibits and pleadings she had requested. On February 11, 2019, Justice Gauthier granted an extension to February 22, 2019, advising the appellant [TRANSLATION] "that this deadline must be met" (emphasis added).

[5] That deadline was not met. On March 28, 2019, the appellant filed a motion requesting a fourth extension of time for filing the appeal book. In addition to the previous problems of missing or incomplete documents, the appellant cited (for the first time) health problems. She provided few details in this regard. Her notice of motion simply stated that she was [TRANSLATION] “in a poor state of health” and her affidavit included a list of her medical appointments between March 11 and March 26, 2019.

[6] This time, the respondent opposed the appellant’s motion, noting the more than 180 days that had passed since the notice of appeal was filed, as well as the multiple extensions that had already been granted. The respondent asserted that the appellant already had in her possession all of the documents that had to be included in the appeal book and that she had not acted with due speed.

[7] On April 18, 2019, Justice Pelletier dismissed the motion seeking a fourth extension and invited the respondent to file a motion to have the appeal dismissed for delay. Justice Pelletier noted the appellant’s failure to (i) meet the strict deadline imposed by Justice Gauthier, (ii) explain the delay and (iii) demonstrate that her appeal was well-founded. Justice Pelletier’s decision was not appealed.

[8] On May 1, 2019, the respondent filed this motion for dismissal of the appeal for delay and absence of any reasonable chance of success. The details of the delay are presented above. With regard to the absence of any reasonable chance of success, the respondent cites the following facts: (i) the time for filing the appeal book has expired, (ii) the request for an

extension of that time was dismissed and (iii) the appeal cannot be heard without the appeal book.

[9] In reply to this motion, the appellant provided further details concerning her health problems, including a certificate of incapacity for work effective from May 1 to May 9, 2019. The appellant claims that her health problems began in the fall of 2018, but provided no details or evidence with respect to the period prior to mid-March 2019. The appellant is requesting that the appeal be stayed to give her time to address her health problems.

[10] The only indication that the appellant's health problems existed before the last deadline for filing the appeal book (February 22, 2019) is simply the appellant's own statement, made in May 2019, that was supported by no details or evidence. The motions requesting the second and third extensions (filed in mid-December 2018 and late January 2019) made no mention of health problems.

[11] I accept that the appellant's health problems may have worsened since mid-March 2019. However, I am not convinced that her health problems, to the extent they existed before the last deadline for filing the appeal book (February 22, 2019), were sufficiently serious to prevent her from meeting that deadline. The appellant has cited in support of her fourth request for an extension of time no facts that Justice Pelletier was unaware of when he refused to grant that request.

[12] With regard to the alleged absence of several documents that should be included in the appeal book, I note that the appellant is the one responsible for obtaining the necessary documents. In light of the submissions of the parties, I am not satisfied that the appellant acted with due speed to obtain the necessary documents. In addition, I do not believe that she would be able to file the appeal book quickly, even if she did not have health problems.

[13] For the above reasons, I conclude that the appellant did not provide a reasonable explanation for the delay in filing her appeal book. I agree with the respondent that the appeal should be dismissed for delay. I also agree with the respondent that the appeal must be dismissed because there is no reasonable chance of success since (i) the time for filing the appeal book has expired, (ii) the request for an extension of that time was dismissed and (iii) the appeal cannot be heard without the appeal book.

[14] Absent a reasonable explanation for the delay in filing the appeal book, the stay of the appeal requested by the appellant would not be justified.

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“George R. Locke”

J.A.

“I agree.  
Johanne Gauthier J.A.”

“I agree.  
Marianne Rivoalen J.A.”

**FEDERAL COURT OF APPEAL**

**SOLICITORS OF RECORD**

**DOCKET:**

A-310-18

**STYLE OF CAUSE:**

GINETTE LAMONTAGNE v.  
THE MINISTER OF NATIONAL  
REVENUE AND SUN LIFE  
FINANCIAL DISTRIBUTORS  
(CANADA) INC.

**MOTION IN WRITING DISPOSED OF WITHOUT APPEARANCE OF PARTIES**

**REASONS FOR ORDER:**

LOCKE J.A.

**CONCURRED IN BY:**

GAUTHIER J.A.  
RIVOALEN J.A.

**DATED:**

MAY 31, 2019

**WRITTEN SUBMISSIONS:**

Ginette Lamontagne

FOR THE APPELLANT, ON HER  
OWN BEHALF

Sara Jahanbakhsh

FOR THE RESPONDENT

Luc Deshaies

FOR THE INTERVENER

**SOLICITORS OF RECORD:**

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