

Federal Court of Appeal



Cour d'appel fédérale

Date: 20131016

Docket: A-183-12

Citation: 2013 FCA 245

**CORAM: EVANS J.A.
GAUTHIER J.A.
NEAR J.A.**

BETWEEN:

CHRISTOPHER J. ROPER

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Toronto, Ontario, on October 16, 2013.

Judgment delivered from the Bench at Toronto, Ontario, on October 16, 2013.

REASONS FOR JUDGMENT OF THE COURT BY:

EVANS J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on October 16, 2013).

EVANS J.A.

[1] This is an appeal from a decision of the Tax Court of Canada (2012 TCC 157) in which Justice Webb (Judge), then a Judge of the Tax Court, granted a motion by the Crown to dismiss an appeal by Christopher J. Roper from reassessments of his income tax liability for the taxation years 2001 and 2002.

[2] The Judge made the Order after Mr Roper had failed to comply with a costs Order dated February 21, 2012, for \$10,000. This amount included unpaid costs previously awarded against Mr Roper in interlocutory proceedings in his appeal to the Tax Court.

[3] The Judge carefully set out the protracted history of the appeal which Mr Roper had commenced in 2009. This included the substantial delays attributable to Mr Roper, and his failure to comply with three previous Orders of the Tax Court, one relating to the timely filing of documents and two to the award of costs.

[4] The Judge stated that Mr Roper explained that he did not comply with the costs Order of February 21, 2012, because he had been experiencing financial difficulties. The Judge noted that, even though these problems predated the Order of February 21, 2012, Mr Roper was raising them in the Tax Court for the first time. The Judge also said that because Mr Roper was a lawyer, he knew the consequences of disobeying an Order of the Court, especially since he had been warned more than once that his appeal could be dismissed for non-compliance.

[5] We are not persuaded that the Judge made any error in exercising his discretion to dismiss Mr Roper's appeal that would warrant the intervention of this Court. The Judge neither committed an error of law, nor misapprehended the facts, nor exercised his discretion on the basis of an unreasonable weighing of relevant considerations.

[6] Mr Roper argued that, unlike, for example, Ontario's Superior Court of Justice, the Tax Court may not dismiss an appeal on the ground that the appellant has failed to comply with an Order of the Court because there is no provision to this effect in the *Tax Court of Canada Rules (General Procedure)*, SOR/90-688a (Rules). He says that the silence of the Rules on this issue is particularly significant since section 64 of the Rules expressly provides for the dismissal of an appeal for delay.

[7] We do not agree. Like other courts, the Tax Court has the implied jurisdiction to ensure that its Orders are obeyed and to prevent the abuse of its process: *Yacyshyn v. Canada*, [1999] 1 C.T.C. 130 (FCA) at para. 12. In an appropriate case, non-compliance with Court Orders may warrant the severe remedy of dismissing an appeal.

[8] Mr Roper also argued that the Judge should have considered the Court's broad discretion to issue an Order that was just, despite his failure to comply with an Order of the Court. In particular, he said, the Judge should have considered whether dismissing the appeal was necessary for ensuring a just result. Mr Roper told the Judge that he had paid the costs of \$10,000 shortly after the date by which the Court, had ordered him to pay them.

[9] It is clear from the Judge's reasons in this case that in exercising his discretion he took into account Mr Roper's previous failures to move his appeal forward in a timely fashion and to comply with earlier Orders of the Court. The Judge did not regard himself as bound to grant the Crown's motion to dismiss the appeal simply because Mr Roper had not complied with the Order of February 21, 2012, even though that Order had stated that the appeal "shall" be dismissed if Mr

Roper did not comply with it. It is not a legal error for a judge to fail to expressly mention in his reasons everything that he might have said.

[10] In our view, it cannot reasonably be said that, on the facts before him, the Judge's dismissal of Mr Roper's appeal caused a serious injustice requiring our intervention.

[11] For these reasons, the appeal will be dismissed with costs fixed in the amount of \$500, inclusive of disbursements and any applicable taxes.

"John M. Evans"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-183-12

(APPEAL FROM A DECISION OF THE HONOURABLE JUSTICE WEBB OF THE TAX COURT, DATED MAY 11, 2012, DOCKET NO. 2009-719 (IT)G)

STYLE OF CAUSE:

CHRISTOPHER J. ROPER V. HER
MAJESTY THE QUEEN

PLACE OF HEARING:

TORONTO, ONTARIO

DATE OF HEARING:

October 16, 2013

**REASONS FOR JUDGMENT
OF THE COURT BY:**

EVANS J.A.
GAUTHIER J.A.
NEAR J.A.

DELIVERED FROM THE BENCH BY:

EVANS J.A.

APPEARANCES:

Christopher J. Roper

FOR THE APPELLANT

Dominique Gallant

FOR THE RESPONDENT

SOLICITORS OF RECORD:

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FOR THE APPELLANT

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