

Federal Court of Appeal



Cour d'appel fédérale

Date: 20140410

Docket: 14-A-13

Citation: 2014 FCA 94

Present: NOËL J.A.

BETWEEN:

TOBY CREEK ESTATES LTD.

Applicant

and

HER MAJESTY THE QUEEN

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on April 10, 2014.

REASONS FOR ORDER BY:

NOËL J.A.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20140410

Docket: 14-A-13

Citation: 2014 FCA 94

Present: NOËL J.A.

BETWEEN:

TOBY CREEK ESTATES LTD.

Applicant

and

HER MAJESTY THE QUEEN

Respondent

REASONS FOR ORDER

NOËL J.A.

[1] The applicant brings a motion for an extension of time to lodge an appeal from the decision of Chief Justice Rip wherein he quashed the notices of appeal filed with the Tax Court of Canada because they were not filed within the 90-day period set out in section 169 of the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.).

[2] The respondent opposes the motion on the basis that the appellant does not have an arguable case on appeal. This is the first factor which must be considered in disposing of a motion such as this.

[3] In the present case, the proposed appellant does not have an arguable case as the record shows that the notices of appeal before the Tax Court were not filed before some five years had expired after the notices of confirmation were issued. According to section 167, the Tax Court may only extend the time for filing a notice of appeal when the notice is filed within one year from the 90 day-period set out in section 169.

[4] It follows that the Tax Court judge had no alternative but to quash the purported notices of appeal and there is no basis on which this Court could possibly intervene.

[5] The motion for an extension of time is accordingly dismissed.

“Marc Noël”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: 14-A-13

STYLE OF CAUSE: TOBY CREEK ESTATES LTD. v.
HER MAJESTY THE QUEEN

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: NOËL J.A.

DATED: APRIL 10, 2014

WRITTEN REPRESENTATIONS BY:

Toby Creek Estates Ltd.

FOR THE APPLICANT
(SELF-REPRESENTED)

Paige MacPherson

FOR THE RESPONDENT

SOLICITORS OF RECORD:

William F. Pentney
Deputy Attorney General of Canada

FOR THE RESPONDENT