

Docket: 2006-1167(EI)

BETWEEN:

GILLES JEAN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on September 1, 2007, at Québec, Quebec.

Before: The Honourable Justice Alain Tardif

Appearances:

Counsel for the Appellant: Yvon Chouinard

Counsel for the Respondent: Marie-Claude Landry

ORDER

[OFFICIAL ENGLISH TRANSLATION]

The motion to adjourn is granted, but the Appellant must pay \$1,000 in fines for abuse of procedure on or before December 7, 2007, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, on this 26th day of October 2007.

“Alain Tardif”

Tardif J.

Translation certified true
on this 10th day of December 2007.
Gibson Boyd, Translator

Citation: 2007TCC619

Date: 20071026

Docket: 2006-1167(EI)

BETWEEN:

GILLES JEAN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR ORDER

Tardif J.

[1] This is an appeal concerning the insurability of work performed by the Appellant.

[2] The case had initially been scheduled for hearing at Percé on May 16, 2007. Following a motion to adjourn, the case was rescheduled for hearing on September 11, 2007, this time in Québec.

[3] On the morning of September 11, 2007, counsel for the Appellant filed a medical certificate that was received the same morning or the day before, as the date appearing on this certificate in support of a further adjournment is September 10.

[4] The medical certificate issued in the Appellant's name describes an unmanaged diabetes problem and prescribes an indeterminate period of disability.

[5] The Respondent had to accept the obvious: it was impossible to proceed. Yet she insisted on adding that there was abusive behaviour warranting \$1,000 in compensation.

[6] In support of her motion, she relied on three Federal Court of Appeal Judgments:

- *Fournier v. Canada* [2005] F.C.J. No. 606, 2005 FCA 131 A-677-04;
- *Yacyshyn v. Canada* [1999] F.C.J. No. 196, A-416-98; and
- *Sherman v. Canada (Minister of National Revenue-MRN)* [2003] 4. F.C. 865, [2003] F.C.J. No. 710, 2003 FCA 202 and A-387-02.

[7] Since its creation, the Tax Court of Canada has always held in very high consideration the goal of simplifying procedure as much as possible, but also, and above all, its implementation, such that the Appellants can be heard as quickly as possible and in a place that is as near to their residence as possible, in the aim of decreasing the costs required to hear the case.

[8] The Tax Court of Canada travels around and sits at numerous sites, very often in places other than courthouses, in order to conduct hearings promptly, considering the significant financial impact the cases can have on the parties.

[9] This method incurs exorbitant costs because counsel for the Respondent and all witnesses, who usually come from urban centres, must travel.

[10] Those are realities that must be saluted and encouraged; to keep the system functioning properly, however, requires the good faith and cooperation of all parties involved in the case.

[11] Unfortunately, it must be noted that a considerable number of cases do not proceed for various reasons; settlements, discontinuances, adjournments occur in the week preceding the week when the hearing is scheduled or even, as is the case here, the very morning of the hearing.

[12] The result is that significant expenses must be borne by the party suffering this inconvenience; if the settlement, the motion for adjournment, or the discontinuance had occurred earlier, it would then have been possible to fill the opening becoming available, while avoiding the many journeys made by the witness.

[13] I understand and readily accept that this ideal scenario is not always possible, due to various reasons including illness and accident, situations that are entirely unforeseen and beyond control.

[14] Abuse, laxism, negligence, lack of planning are however too often the root cause preventing the proceedings.

[15] In this case, the Respondent accused the Appellant of negligence tantamount to abuse, which she wishes to sanction by levying a penalty of \$1,000.

[16] At first, the Appellant's case was to be heard in Percé. Counsel for the Respondent and the witnesses went there for the hearing that never took place. The Appellant had requested and obtained an adjournment.

[17] A new date was set for trial in Québec this time. However, either on the morning of the hearing or the day before, counsel for the Appellant received a medical certificate to the effect that the Appellant cannot go to Québec for his trial.

[18] However, the Respondent and her witnesses were present and found out at the same time as the Court that the Appellant's absence would draw attention. This is the same scenario that had played out on the first trial date in Percé, when the witnesses also travelled from Québec.

[19] The circumstantial evidence seems sufficiently convincing to conclude that there was truly abuse on the part of the Appellant, who is acting like he is above the law, behaviour that I find quite unacceptable and totally contrary to healthy administration of matters under the jurisdiction of the Tax Court of Canada.

[20] With respect to this, I would like the parties to note *Jangir Sidhu v. Canada (Minister of National Revenue M.N.R.)*, [1994] C.F.A. No. 2028, Registry file No. A-679-93.

[21] The motion to adjourn is granted and the Appellant will be required to pay \$1,000 in fines for abuse of procedure, which will have to be paid on or before December 7, 2007.

Signed at Ottawa, Canada, this 26th day of October 2007.

“Alain Tardif”

Tardif J.

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CITATION: 2007TCC619
COURT FILE NUMBER: 2006-1167(EI)
STYLE OF CAUSE: GILLES JEAN AND THE QUEEN
PLACE OF HEARING: Québec, Quebec
DATE OF HEARING: September 11, 2007
REASONS FOR ORDER BY: The Honourable Justice Alain Tardif
DATE OF ORDER: October 26, 2007

APPEARANCES:

Counsel for the Appellant: Yvon Chouinard
Counsel for the Respondent: Marie-Claude Landry

COUNSEL OF RECORD:

For the Appellant:

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