Docket: 2003-2969(IT)APP

BETWEEN:

BONNIE VAN DOORN,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

Application heard on April 28, 2004, at Kitchener, Ontario,

By: The Honourable Justice E.A. Bowie

Appearances:

Counsel for the Applicant: David J. Thrasher

Counsel for the Respondent: Ronald MacPhee

ORDER

Upon application for an Order extending the time within which appeals from assessments of tax made under the *Income Tax Act* for the 1999, 2000 and 2001 taxation years may be instituted;

And upon hearing the Applicant and the agent for the Respondent;

It is ordered that the application is dismissed.

Signed at Ottawa, Canada, this 7th day of May, 2004.

Bowie J.

Citation: 2004TCC351
Date: 20040507
Docket: 2003-2969(IT)APP

BETWEEN:

BONNIE VAN DOORN,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Bowie J.

[1] Before me is an application under section 167 of the *Income Tax Act* (the *ITA*) for an extension of the time within which Ms. Van Doorn may begin appeals from assessments for income tax for the years 1999, 2000 and 2001. That section specifies, in subsection (5), certain criteria that must be met before I can grant the Order she seeks. The Respondent opposes the application only on the basis that she says subparagraph 167(5)(*b*)(i) has not been met. That paragraph requires the Applicant to show one of two things; either that within the time limited by section 169 for bringing the appeals she was unable to act, or to instruct another to act for her, or that she had a *bona fide* intention to appeal.

[2] On the evidence, it is clear that the Applicant was able to do what was necessary to launch an appeal. However, she says that she had a *bona fide* intention to appeal throughout, and that she is therefore entitled to succeed in this application.

[3] Ms. Van Doorn's proposed appeal to this Court is from assessments that included in her income for the years in question amounts paid to her pursuant to a non-competition clause contained in an agreement whereby she sold her 50% shareholding in a certain corporation. The owner of the other 50% of the shares, who was well known to her, was also assessed for amounts paid to him under the non-competition clause. They both objected to these assessments and their assessments were confirmed. In the Applicant's case, the notification of confirmation was mailed on February 12, 2003. She therefore had until May 11, 2003 to appeal; unfortunately she did not do so. On August 19, 2003 she filed this application to extend the time to appeal.

[4] The only evidence on the application was that of the Applicant. In her evidence she said that from the beginning, which I take to mean since the assessments were issued in 2001 and 2002, she had the intention to appeal them. She explained that she was taking advice with respect to tax matters from a lawyer and an accountant in Toronto, and that on the accountant's advice she had retained the services of a local bookkeeper in western Ontario, where she lives. When she received the notification of confirmation of the assessments, she consulted these people. Her lawyer advised her not to appeal. The notice of application that she signed on August 11, 2003 reads:

> It has been brought to my attention by my accountant that I may appeal confirmation of Notices of Objection for the tax years 1999, 2000 and 2001 regarding non-competition payments which were included as taxable income. A recent Federal Court of Appeal decision in the *T. Manrell v. The Queen* case has recently been favourably made for the taxpayer and my situation is the same. My accountant and the appeals officer at Canada Customs and Revenue Agency have just informed me that I should start the procedure. When I received my Notice of Confirmation By the Minister I spoke to my Lawyer and he advised me not to appeal at that time as it would not change anything and would be very costly. The *T. Manrell* case had already been decided in favour of CCRA at that time in the Tax court of Canada.
>
> Now that everything has changed I am appealing and would like to apply for an extension of time.

[5] In her evidence before me, the Applicant said that she first learned of the Court of Appeal's decision in *Manrell v. The Queen*[1] from the other shareholder, and that he told her of it within the 90-day appeal period; she also said that she

---

1 [2003] 3 F.C. 727.

brought her application to this Court right away after learning of that decision. Quite obviously, both of these statements cannot be correct. If she had learned of *Manrell* before May 11, she would have taken positive action long before August 11. I infer that while it was her co-shareholder who first told her of *Manrell*, that conversation took place after May 11, and probably much closer to August 11. It was only later that she spoke again with her lawyer and was advised that an appeal would succeed. She then applied for the extension of time.

[6] My conclusion as to this sequence of events is supported by the absence of a clear statement by the Applicant that she formed the intention to appeal at some specific point in time after she received the notification of confirmation dated February 12, 2003. Her counsel did not ask her when she formed the intention to appeal following that notification. Instead, he relied solely on her statement that she had always intended to appeal since the assessments were issued, and asked her whether she had ever instructed her advisors not to appeal, to which she answered "no". This together with the absence of any evidence from the lawyer, the accountant or the bookkeeper, lead me to infer that when the time ran out in May 2003, she had no intention of appealing. Sometime thereafter her co-shareholder told her about the *Manrell* decision that had been pronounced on March 11, and she quickly wrote the letter of application dated August 11, 2003 that served as her Notice of Application in this Court.

[7] If the Appellant had formed the intention to appeal the assessments at any time after they were issued, she had certainly abandoned the intention by May 11, after being advised not to appeal. She cannot therefore claim to come within subclause 167(5)(*b*)(i)(B) of the *Act*. See *Wilson v. The Queen*.[2]

[8] This is an unfortunate case. There is a considerable amount of tax involved, and the appeals would certainly succeed if only they had been launched in time. On the Applicant's evidence it appears that she was given poor advice; her advisors must not have known that the decision of this Court that the Minister had relied on in assessing her, and in confirming those assessments, had been appealed to the Federal Court of Appeal, although that fact was easily ascertainable. Nevertheless, Parliament has established very specific and unambiguous factual criteria that I must apply in considering an application such as this, and they have not been met.

---

[2] 2003 DTC 928 at para. 26.

[9] The application to extend the time in which appeals may be commenced is dismissed.

Signed at Ottawa, Canada, this 7th day of May, 2004.

J.T.C.C.

CITATION:	2004TCC351
COURT FILE NO.:	2003-2969(IT)APP
STYLE OF CAUSE:	Bonnie Van Doorn and Her Majesty the Queen
PLACE OF HEARING:	Kitchener, Ontario
DATE OF HEARING:	April 28, 2004
REASONS FOR JUDGMENT:	The Honourable Justice E.A. Bowie
DATE OF JUDGMENTS:	May 7, 2004

APPEARANCES:

Counsel for the Appellant:	David J. Thrasher
Counsel for the Respondent:	Ronald MacPhee

COUNSEL OF RECORD:

For the Appellant:

Name:	David J. Thrasher
Firm:	

For the Respondent:	Morris Rosenberg Deputy Attorney General of Canada Ottawa, Canada