

Citation: 2004TCC401
Date: 20041122
Docket: 2003-1740(IT)I

BETWEEN:

JON BRESLAW,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

(Delivered orally from the bench on May 10, 2004,
in Montreal, Quebec.)

Archambault, J.

[1] After his appeals against the assessments issued by the Minister of National Revenue (**Minister**) for the 1997 and 1998 taxation years had been heard, but before a judgment was issued, Mr. Jon Breslaw filed before this Court a motion to set aside those assessments on the grounds that the judgment had not been issued within the prescribed time.

Facts

[2] The hearing of Mr. Breslaw's appeal filed under the informal procedure was held on December 11, 2003. It lasted a whole day, starting at 10 a.m. and ending at 4:15 p.m. At the end of the day, the presiding judge decided to reserve judgment. On the same day, he decided to ask for a transcript of the "pleadings" and signed a request for it. I have been informed by Court personnel that a 24-page transcript was delivered on January 5, 2004. I was also informed that a second transcript was requested on January 22, 2004, and that a 128-page transcript was accordingly delivered on January 30, 2004.

[3] According to the computation made by Mr. Breslaw, the 90th day after the conclusion of the hearing, that is, the day on which the presiding judge was to deliver

a judgment under the informal procedure, was March 28, 2004. A few days later, on April 13, 2004, Mr. Breslaw filed a motion in this Court. According to his testimony, he was informed prior to the filing of his motion that the judgment had not yet been issued. He indicated that he did not ask specifically whether there were any exceptional circumstances that could explain the delay in issuing the judgment. He assumed that if there were such exceptional circumstances, he would have been advised.

[4] The record of the Court Registry also indicates that on April 26, 2004, the hearings coordinator wrote to Mr. Breslaw informing him that, as of that date, a judgment had not yet been signed by the judge. However, she indicated that a review of the file showed that the transcript of the hearing was only received on January 30, 2004. She also wrote that she anticipated that the judgment would be issued within a week. Actually, the judgment was signed the following day, on April 27, 2004.

Analysis

[5] Basically, the position advanced by Mr. Breslaw during the hearing of his motion was that the assessments should be set aside on the grounds that the judgment was not issued within the prescribed time. In support of his position, he relied on principles developed by the courts in criminal proceedings, and in particular on the decision of the Supreme Court of Canada in *R. v. Rahey*, [1987], 1 S.C.R. 588. As I understand the facts of that particular case, a taxpayer was being prosecuted for tax evasion pursuant to section 239 of the *Income Tax Act*. A motion for a directed verdict was made after the Crown had closed its case. Because the judge took more than 11 months to come to a decision, the taxpayer asked for a stay of proceedings as this delay had prevented him from validly preparing a defence against the prosecution by the Crown. The Supreme Court of Canada concluded that under the *Canadian Charter of Rights and Freedoms* (**Canadian Charter**) a person charged with an offence has the right to be tried within a reasonable time, and since there had been an unreasonable delay, the Court therefore ordered a stay of proceedings. I pointed out to Mr. Breslaw during the course of argument that paragraph 11 *b*) of the Canadian Charter was applicable to criminal matters and that since he was not accused of any offence, it did not apply here.¹

¹ Mr. Breslaw also relied on the *Quebec Charter of Human Rights and Freedoms*, in particular sections 24 and 32.1. However, that legislation is not applicable to proceedings before this Court because, under section 55 thereof, the Quebec Charter only affects those matters that come under the legislative authority of Quebec.

[6] The relevant provision here is section 18.22 of the *Tax Court of Canada Act (Act)*, which provides that: "*The Court shall, other than in exceptional circumstances, render judgment on an appeal referred to in section 18 not later than ninety days after the day on which the hearing is concluded.*" Subsection 2 provides the following definition of exceptional circumstances: "*For the purposes of subsection (1), 'exceptional circumstances' includes circumstances in which written material that the Court requires in order to render a judgment was not received in time to permit the Court to consider it and to render judgment within the time limit imposed by that subsection.*"

[7] At one point, Mr. Breslaw acknowledged that his reliance on the Canadian and Quebec Charters might be ill-founded. However, he stressed that section 18.22 is clear, and I agree with him, as it states that this Court "shall . . . render" judgment no later than ninety days after the day on which the hearing is concluded. However, one has to take into account exceptional circumstances. In my view, waiting for the hearing transcript constitutes exceptional circumstances. If one takes into account that all the written material (i.e. the full transcript of the case) was only received on January 30, 2004, then the judgment was issued within the 90-day period following receipt of that written material.

[8] In any event, whether or not this is a proper interpretation of section 18.22 of the Act, it has now become a moot point because, when I heard the motion, judgment had already been rendered. I do not believe that I have any jurisdiction to modify a decision rendered by one of my colleagues. I rely on section 18.24 of the Act which states that: "*An appeal from a judgment of the Court in a proceeding in respect of which this section applies lies to the Federal Court of Appeal in accordance with section 27 of the Federal Courts Act.*" Basically, only the Federal Court of Appeal now has the power to do anything about that decision.

[9] For all these reasons, I conclude that Mr. Breslaw's motion cannot be granted by the Court and must be quashed for lack of object.

Signed at Ottawa, this 22nd day of November 2004.

“Pierre Archambault”

Archambault, J.

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COURT FILE NO.: 2003-1740(IT)I

STYLE OF CAUSE: Jon Breslaw and Her Majesty the Queen

PLACE OF HEARING: Montreal, Quebec

DATE OF HEARING: May 10, 2004

REASONS FOR ORDER BY: The Honourable Justice Pierre Archambault

DATE OF ORDER: May 26, 2004

APPEARANCES:

For the Appellant: The Appellant himself

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COUNSEL OF RECORD:

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