

Docket: 2008-3925(IT)G

BETWEEN:

DAVID A. DIXON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Respondent's Motion to dismiss heard on January 14, 2010
at Vancouver, British Columbia

Before: The Honourable Justice G. A. Sheridan

Appearances:

Counsel for the Appellant: Jeffrey S. Glasner and
Roger Watts
Counsel for the Respondent: Heather Pineo (Student-at-law)
Raj Grewal

ORDER

Upon a motion by the Respondent for an Order dismissing the appeals pursuant to Sections 64, 91(c), 91(d) and 147 of the *Tax Court of Canada Rules (General Procedure)* for delay; or in the alternative, an order to extending the timeline in which to complete the pre-trial steps in this appeal, pursuant to Section 12 of the *Rules*;

And having heard the submissions of the parties and read the materials filed, in particular, the Affidavit of Kara Neligan;

IT IS HEREBY ORDERED THAT:

The Respondent's alternative remedy is granted and the Order of Tardif, J. dated September 28, 2009 is amended to read:

1. The parties are directed to prepare a list of documents pursuant to the *Tax Court of Canada Rule (General Procedure)* and to file and serve the list on the opposing party no later than February 26, 2010;
2. The examinations for discovery shall be completed no later than April 30, 2010;
3. Undertakings shall be completed no later than May 31, 2010;
4. The parties shall communicate with the Hearings Coordinator, in writing, on or before June 30, 2010 to advise the Court whether or not the case will settle, whether a pre-hearing conference would be beneficial or whether a hearing date should be set. In the latter event, the parties may file a joint application to fix a time and place for the hearing in accordance with section 123 of the *Tax Court of Canada Rules (General Procedure)*.

In accordance with the attached Reasons for Order, the Respondent is also awarded costs in respect of this motion.

Signed at Ottawa, Canada, this 27th day of January, 2010.

“G. A. Sheridan”

Sheridan J.

Citation: 2010TCC49
Date: 20100127
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DAVID A. DIXON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Sheridan, J.

[1] At the hearing, after rendering my decision on the substantive issues of the Respondent's motion, I deferred the Respondent's request for the costs of this motion to the trial judge. Upon further reflection, however, I am satisfied that the Respondent's request ought to be granted at this stage of the proceedings.

[2] In declining the Respondent's request to dismiss the Appellant's appeal for delay, I accepted the Appellant's evidence that he missed the deadline for the filing of his List of Documents because he had confused the date set out in the Order of Tardif, J. (October 30, 2009) with the date the parties had proposed in their joint submission to the Court (October 31, 2009). As it turned out, October 31, 2009 was a Saturday; in keeping with its practice in such circumstances, the Court revised the proposed date to the week day immediately prior and issued the Order accordingly. At that point in the proceedings, the Appellant was self-represented.

[3] Having missed the October 30, 2009 deadline, the Appellant was advised that, under the *Tax Court of Canada Rules (General Procedure)*, he would not be permitted to file his List of Documents without first obtaining a new order to amend the dates in the Tardif Order. Instead of taking that step, the Appellant (who was represented by counsel for the purposes of the Respondent's motion) coat-tailed his informal request for an extension of time to file his List of Documents onto the

alternative relief sought in the Respondent's motion to dismiss the Appellant's appeal for delay. By employing this strategy, not only did the Appellant fail to comply with the Court's direction but also effectively left to the Respondent the lion's share of work that was ultimately to his benefit. And, it must be borne in mind, this occurred against the backdrop of his having failed to comply with the Tardif Order in the first place.

[4] For its part, the Crown's written materials and oral submissions were very thoroughly prepared and well presented.

[5] In these circumstances, it seems only fair that the Appellant pay the costs of the Respondent's motion.

Signed at Ottawa, Canada, this 27th day of January, 2010.

“G. A. Sheridan”

Sheridan J.

CITATION: 2010TCC49

COURT FILE NO.: 2008-3925(IT)G

STYLE OF CAUSE: DAVID A. DIXON
AND HER MAJESTY THE QUEEN

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: January 14, 2010

REASONS FOR ORDER BY: The Honourable Justice G. A. Sheridan

DATE OF ORDER: January 27, 2010

APPEARANCES:

Counsel for the Appellant: Jeffrey S. Glasner and
Roger Watts

Counsel for the Respondent: Heather Pineo (Student-at-law)
Raj Grewal

COUNSEL OF RECORD:

For the Appellant:

Name: Jeffrey S. Glasner and
Roger Watts

Firm: Boughton Law Corporation

For the Respondent: John H. Sims, Q.C.
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