

Dockets: 2007-1137(IT)G
2007-1138(GST)G

BETWEEN:

SHELLEY ROBERT DEKOCK,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion heard by conference call
on February 3, 2011 at Ottawa, Canada

Before: The Honourable Justice Wyman W. Webb

Participants:

For the Appellant: The Appellant himself
Counsel for the Respondent: Johanna Russell

ORDER

The Appellant's motion to overturn the Order of this Court dated July 4, 2007 that had quashed the Appellant's purported appeal under the *Excise Tax Act* from the assessment (or reassessment) of his liability under that *Act* for the period from January 1, 1999 to December 31, 2001, is dismissed. Since this Motion is dismissed, there is no appeal under the *Excise Tax Act* to consolidate with the Appellant's appeal under the *Income Tax Act*.

Signed at Ottawa, Canada, this 14th day of March 2011.

“Wyman W. Webb”

Webb J.

Citation: 2011TCC159
Date: 20110314
Dockets: 2007-1137(IT)G
2007-1138(GST)G

BETWEEN:

SHELLEY ROBERT DEKOCK,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Webb J.

[1] The Respondent had brought a Motion on June 5, 2007 to quash the Appellant's purported appeal under the *Excise Tax Act* from the assessment (or reassessment) of his liability under that *Act* for the period from January 1, 1999 to December 31, 2001. The Motion was granted and the purported appeal was quashed on the basis that the Appellant had not filed a Notice of Objection to the assessment (or reassessment) within the time specified in the *Excise Tax Act* for filing such Notice. An Order of this Court quashing the purported appeal was issued on July 4, 2007.

[2] The Appellant brought a Motion dated August 17, 2010 to set aside this Order. By Order of this Court dated August 27, 2010, this Motion was dismissed. Undaunted, the Appellant filed yet another Motion to set aside this Order on September 27, 2010.

[3] The Appellant argued that the Order dated July 4, 2007 should be set aside on the basis that the GST registration number referred to in the Order is not his GST registration number. The GST registration number identified in the Order is 8899521890. The Appellant's actual GST registration number is 889952180. An additional digit (a "9") was inserted in the number that was in the Order. The number that was in the Order is the same number that was in the documents submitted by the

Respondent in relation to the Respondent's motion to quash the Appellant's purported appeals. The Appellant himself did not include this number in his Notice of Appeal. It seems to me that the incorrect GST registration number in the Order was a minor typographical error and does not affect the validity of the Order. The reference to the incorrect number does not affect the determination that the Appellant had failed to file a Notice of Objection.

[4] In *Chandler v. Alberta Association of Architects*, [1989] 2 S.C.R. 848 Justice Sopinka, writing on behalf of a majority of the Justices of the Supreme Court of Canada stated that:

Functus Officio

19 The general rule that a final decision of a court cannot be reopened derives from the decision of the English Court of Appeal in *In re St. Nazaire Co.* (1879), 12 Ch. D. 88. The basis for it was that the power to rehear was transferred by the Judicature Acts to the appellate division. The rule applied only after the formal judgment had been drawn up, issued and entered, and was subject to two exceptions:

1. where there had been a slip in drawing it up, and,
2. where there was an error in expressing the manifest intention of the court. See *Paper Machinery Ltd. v. J. O. Ross Engineering Corp.*, [1934] S.C.R. 186.

[5] In *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, [2003] 3 S.C.R. 3, Justice Iacobucci and Justice Arbour writing on behalf of a majority of the Justices of the Supreme Court of Canada stated that:

79 It is clear that the principle of *functus officio* exists to allow finality of judgments from courts which are subject to appeal (see also *Reekie v. Messervey*, [1990] 1 S.C.R. 219, at pp. 222-23). This makes sense: if a court could continually hear applications to vary its decisions, it would assume the function of an appellate court and deny litigants a stable base from which to launch an appeal.

[6] The decision made by Justice Beaubier and reflected in the Order dated July 4, 2007 was a final decision in the matter of whether the Appellant's appeal under the *Excise Tax Act* from the assessment (or reassessment) of his liability under that *Act* for the period from January 1, 1999 to December 31, 2001 should be quashed. To open the matter to correct the slip identified by the Appellant in the GST registration number, would not provide the remedy that the Appellant is seeking. It would only correct the GST registration number; it would not result in a new hearing on the question of whether his purported appeal under the *Excise Tax Act* should be

quashed. The Court cannot hear applications to vary its decisions. As noted by the Supreme Court of Canada this is the function of appellate courts. Justice Beaubier at the hearing of the Motion had indicated to the Appellant that he had the right to appeal his decision to the Federal Court of Appeal. The Appellant did not do so.

[7] The Appellant's motion to overturn the Order of this Court dated July 4, 2007 that had quashed the Appellant's purported appeal under the *Excise Tax Act* from the assessment (or reassessment) of his liability under that *Act* for the period from January 1, 1999 to December 31, 2001, is dismissed. Since this Motion is dismissed, there is no appeal under the *Excise Tax Act* to consolidate with the Appellant's appeal under the *Income Tax Act*.

[8] The Respondent did not ask for costs and therefore no costs will be awarded.

Signed at Ottawa, Canada, this 14th day of March 2011.

“Wyman W. Webb”

Webb J.

CITATION: 2011TCC159

COURT FILE NOS.: 2007-1137(IT)G; 2007-1138(GST)G

STYLE OF CAUSE: SHELLEY ROBERT DEKOCK AND THE QUEEN

PLACE OF MOTION: Ottawa, Canada

DATE OF MOTION: February 3, 2011

REASONS FOR ORDER BY: The Honourable Justice Wyman W. Webb

DATE OF ORDER: March 14, 2011

PARTICIPANTS:

For the Appellant: The Appellant himself
Counsel for the Respondent: Johanna Russell

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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