

Docket: 2012-839(IT)I

BETWEEN:

GAIL S. THURSTON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Show Cause hearing held on March 13, 2013,
at Vancouver, British Columbia.

Before: The Honourable Justice Johanne D'Auray

Appearances:

For the Appellant:

No appearance

Counsel for the Respondent:

Zachary Froese

AMENDED JUDGMENT

Whereas counsel for the respondent made a motion to dismiss the appeal of the appellant for her 2009 taxation year for failure to appear;

Whereas the appellant was not present in Court when her appeal was called for hearing, although duly notified of the time and place of the hearing;

Whereas no one appeared on her behalf;

And having heard what was alleged by the respondent;

The respondent's motion to dismiss the appeal of the appellant is granted and the appeal from the assessment made under the *Income Tax Act* for the 2009 taxation year is dismissed in accordance with the attached the Reasons for **Judgment**.

This Amended Judgment is issued in substitution of the Order dated March 22, 2013.

Signed at Ottawa, Canada, this 3rd day of April 2013.

“Johanne D' Auray”

D'Auray J.

Citation: 2013 TCC 87

Date: 20130403

Docket: 2012-839(IT)I

BETWEEN:

GAIL S. THURSTON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

AMENDED REASONS FOR JUDGMENT

D'Auray J.

[1] The appeal of *Gail Thurston v. Her Majesty the Queen* 2012-839(IT)I was called for hearing by the Court's Registrar, Mr. Prasad, on March 13, 2013, at 9:30 in Vancouver.

[2] The appellant failed to appear.

[3] The respondent made a motion to dismiss the appeal of the appellant with respect to her 2009 taxation year.

[4] In light of the following facts, the appeal for the appellant's 2009 taxation year is dismissed.

[5] The appellant filed a Notice of Appeal on February 24, 2012. The appeal was filed late.

[6] On May 8, 2012, a Notice of Hearing was issued by this Court, setting the date of June 12, 2012 for the hearing of the application for an extension of time.

[7] The respondent consented to the application for an extension of time and the appeal was deemed filed on May 22, 2012.

[8] The Reply to the Notice of Appeal was filed on June 18, 2012 by the respondent. Under the Statement of Facts, the respondent stated that the amount of federal tax in issue for the 2009 taxation year was \$35,141.04. He stated that the Rule 17 of the *Tax Court of Canada (Informal Procedure)*, SOR/90-688b, as amended, limits the relief to which the appellant is entitled, to \$12,000 for the particular taxation year.

[9] A Notice of Hearing was sent by registered mail on July 10, 2012 to the appellant at 641, Ballantree Road, West Vancouver, British Columbia, V7S 1W4, which is the address provided by the appellant in her Notice of Appeal, advising the appellant that the hearing in her appeal had been scheduled to be heard on September 5, 2012 at 9:30 a.m. or as soon thereafter as the parties can be heard, at Tax Court of Canada, 701 West Georgia Street, 6th Floor, Vancouver, British Columbia.

[10] On August 2, 2012, the Court sent a letter to the appellant at the same address, namely, 641, Ballantree Road, West Vancouver, British Columbia, V7S 1W4 advising the appellant that the Notice of Hearing sent by registered mail was returned to the Court by Canada Post marked as “Unclaimed”. Accordingly, a Notice of Hearing was sent to the appellant by regular mail to the same address.

[11] By fax dated August 29, 2012, the appellant asked for an adjournment of the hearing of her appeal. The respondent, by letter dated August 30, 2012, did not oppose the appellant’s request for an adjournment.

[12] By a letter dated August 31, 2012, the Court advised the appellant that the adjournment had been granted. In addition, the Court advised the appellant that the amount of federal tax in issue was \$35,141.04. Since the appellant had elected the informal procedure, the Court asked the appellant to provide the Court with an election to limit her appeal to \$12,000 as the Court cannot grant more than \$12,000 under the Informal Procedure or indicate if she wished to proceed under the General Procedure and if so, to provide the Court with the filing fee of \$250.

[13] The appellant did not reply to the letter of August 30, 2012 asking the appellant to either limit her appeal to the amount of \$12,000 or to transfer to the General Procedure.

[14] By an Order dated October 26, 2012, Justice Hogan made the following Order:

Whereas it appears to the Court that the aggregate of all amounts in issue is \$35,141.04;

And whereas the appellant has not elected to limit the appeal to \$12,000.00;

IT IS ORDERED, pursuant to section 18.12 of the *Tax Court of Canada Act*, that the provisions of sections 17.1 to 17.8 of the *Act* apply in respect of this appeal and that the appropriate filing fee required under the General Procedure Rules be submitted to the Court on or before November 20, 2012, in order for this appeal to be properly instituted before the Court.

[15] On October 29, 2012, Mr. Campeau for the Registrar of the Court sent by registered mail, a copy of the Order of Justice Hogan, dated October 26, 2012, to the appellant at 641, Ballantree Road, West Vancouver, British Columbia, V7S 1W4.

[16] By November 20, 2012, no filing fee had been submitted by the appellant.

[17] On February 1, 2013, an Order was issued by the Judicial Administrator of this Court requiring the appellant to appear before the Court in Vancouver on March 13, 2013 at 9:30 a.m. to show cause as to why this appeal should not be dismissed for delay. The Order was sent by registered mail at the same address, namely, 641, Ballantree Road, West Vancouver, British Columbia, V7S 1W4.

[18] On February 20, 2013, the appellant forwarded to the Court a document entitled "Application for Extension of Time to Which an Appeal May be Instituted".

[19] On March 4, 2013, Ms. Jodi Gibson, Hearing Coordinator for the Court, attempted without success to reach the appellant at her home telephone number and on her cellular phone to explain that the Court granted the transfer of her appeal from the Informal Procedure to the General Procedure and that since she had failed to file the required filing fee, a Show Cause Hearing would be held on March 13, 2013, pursuant to the Order issued by the Court on February 1, 2013.

[20] During the week before the trial, the Court's **personnel** in Vancouver were able to get in touch with the appellant. She provided a credit card for the payment of the filing fee, but the authorization for payment was refused. On the day of the hearing, since the appellant was not present in Court, the Registrar in Vancouver called the appellant to find out if she would attend her Show Cause hearing; she responded that she was not aware that she had to attend.

[21] In my view, the appellant failed to prosecute her appeal with due dispatch.

Signed at Ottawa, Canada, this 3rd day of April 2013.

“Johanne D’ Auray”

D’Auray J.

CITATION: 2013 TCC 87

COURT FILE NO.: 2012-839(IT)I

STYLE OF CAUSE: GAIL S. THURSTON v. HER MAJESTY
THE QUEEN

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: March 13, 2013

AMENDED JUDGMENT BY: The Honourable Justice Johanne D'Auray

DATE OF AMENDED
JUDGMENT: April 3, 2013

APPEARANCES:

For the Appellant: No appearance
Counsel for the Respondent: Zachary Froese

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: William F. Pentney
Deputy Attorney General of Canada
Ottawa, Canada