

Federal Court



Cour fédérale

Date: 20111222

Docket: ITA-10724-10

Citation: 2011 FC 1513

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

BETWEEN:

IN THE MATTER OF the Income Tax Act,

AND IN THE MATTER OF an assessment or assessments by the Minister of National Revenue under one or more of the following acts: the Income Tax Act, the Canada Pension Plan and the Employment Insurance Act,

AGAINST:

**4165071 CANADA INC.
1455 Peel Street
Montréal, Quebec H3A 1T5**

**Execution
debtor**

AND

**9220-3728 QUÉBEC INC.
1455 Peel Street, Suite 320
Montréal, Quebec H3A 1T5**

**Adverse
claimant**

REASONS FOR ASSESSMENT OF COSTS

JOHANNE PARENT, Assessment Officer

[1] On May 9, 2011, this Court denied the motion to quash a seizure brought by the adverse claimant with costs. On September 23, 2011, counsel for the Crown submitted its bill of costs to the

Court. Directions were given on October 13, 2011, informing the parties that the assessment of costs would proceed in writing and of the time limit for filing submissions.

[2] In addition to her bill of costs, counsel for the Crown submitted to the record of the Court the affidavit of Julie S. Aubry sworn on July 26, 2011. Although the October 13 directions were served to all parties, the Court Registry received no other submissions or applications to extend the time limit.

[3] The outcome of this assessment could have been very different if the assessment officer had had submissions in response to the bill of costs. As my colleague said in *Dahl v. Canada*, 2007 FC 192 (OT), the *Federal Courts Rules* do not allow assessment officers to “[step] away from a position of neutrality to act as the litigant’s advocate”:

Effectively, the absence of any relevant representations by the Plaintiff, which could assist me in identifying issues and making a decision, leaves the bill of costs unopposed. My view, often expressed in comparable circumstances, is that the *Federal Courts Rules* do not contemplate a litigant benefiting by an assessment officer stepping away from a position of neutrality to act as the litigant’s advocate in challenging given items in a bill of costs. However, the assessment officer cannot certify unlawful items, that is, those outside the authority of the judgment and the Tariff.

Given that I am working without opposing submissions, I will examine the services claimed in the bill of costs.

[4] On the basis of section 5, a claim is made for preparation of the file for a motion for permission to table an affidavit. A review of the Court order allowing this motion shows that costs were not awarded to either party. As provided in Rule 400(1) of the *Federal Courts Rules*, only the

Court “shall have full discretionary power over the amount and allocation of costs and the determination of by whom they are to be paid.” Since the assessment officer does not have the authority to award costs to either party, the costs claimed under this section and the disbursements for this service will not be allowed. All other costs claimed in the bill of costs on the basis of Tariff B are not disputed and will be allowed as claimed.

[5] The claim on the basis of Tariff A for the disbursements as reimbursement for the legal costs that would have been paid when filing the motion and reply will not be allowed. In support of this claim, the assessment officer is referred to the record of the Court, which shows the payments made to the Registry. Despite my review of the record of the Court, I cannot find any invoice for the filing of these proceedings. All of the other costs are undisputed and are considered necessary charges to the conduct of this matter. The amounts are justified and will therefore be allowed as claimed.

[6] The Crown’s bill of costs is allowed in the amount of \$3,068.11.

“Johanne Parent”
Assessment Officer

Toronto, Ontario
December 22, 2011

Federal Court



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FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: ITA-10724-10

STYLE OF CAUSE: IN THE MATTER OF the Income Tax Act, AND IN THE MATTER OF an assessment or assessments by the Minister of National Revenue under one or more of the following acts: the Income Tax Act, the Canada Pension Plan and the Employment Insurance Act, AGAINST 4165071 CANADA INC and 9220-3728 QUÉBEC INC.

ASSESSMENT OF COSTS IN WRITING WITHOUT PERSONAL APPEARANCE OF THE PARTIES

REASONS FOR ASSESSMENT BY: JOHANNE PARENT, Assessment Officer

DATED: December 22, 2011

WRITTEN SUBMISSIONS:

Geneviève Lecours

FOR HER MAJESTY THE QUEEN

N/A

For the ADVERSE CLAIMANT

SOLICITORS OF RECORD:

Myles J. Kirvan
Deputy Attorney General of Canada

FOR HER MAJESTY THE QUEEN

Jean-Paul Gagnon
Montréal, Quebec

For the ADVERSE CLAIMANT