

Federal Court of Appeal



Cour d'appel fédérale

Date: 20150120

Docket: A-260-14

Citation: 2015 FCA 11

**CORAM: DAWSON J.A.
STRATAS J.A.
BOIVIN J.A.**

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

and

SHEILA DIFLORIO

Respondent

Heard at Toronto, Ontario, on January 14, 2015.

Judgment delivered at Ottawa, Ontario, on January 20, 2015.

REASONS FOR JUDGMENT BY:

BOIVIN J.A.

CONCURRED IN BY:

**DAWSON J.A.
STRATAS J.A.**

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Respondent

REASONS FOR JUDGMENT

BOIVIN J.A.

[1] This is an appeal from a decision of then Chief Justice Rip of the Tax Court of Canada (the Tax Court) dated April 22, 2014.

[2] On March 5, 2014 the Tax Court allowed Ms DiFlorio's (the respondent) appeal of her assessment under the *Excise Tax Act*, R.S.C. 1985, c. E-15 for Goods and Services Tax (GST) on the grounds that there was no business partnership between the respondent and her husband that

would permit the Minister of National Revenue to hold her jointly and severally liable for the GST.

[3] The Tax Court allowed the respondent's appeal from the assessment with costs.

[4] Concerned about the Tax Court's jurisdiction to make a costs award, on March 12, 2014, the appellant (the Crown) sent a letter seeking reconsideration of the award of costs by the Tax Court. The Crown submitted that pursuant to subparagraph 18.3009(1)(c)(i) of the *Tax Court of Canada Act*, R.S.C. 1985, c. T-2, cost awards may only be awarded in appeals under Part IX of the *Excise Tax Act* in cases in which the amount in dispute does not exceed \$7,000. The Crown therefore submitted that the amount in dispute was \$16,536.33 and thus in excess of the \$7,000 limitation.

[5] The Tax Court responded to the Crown's letter and issued an amended judgment on April 22, 2014 replacing its judgment issued on March 5, 2014. In that amended decision, the Tax Court increased the costs to "actual costs incurred for counsel" (effectively solicitor and client costs) but provided no reasons.

[6] In its appeal to this Court, the Crown does not take issue with the substantive conclusions reached by the Tax Court in quashing the assessment but appeals the award of costs against it in the amended judgment.

[7] The central issue before our Court is whether the Tax Court had jurisdiction to award any costs let alone solicitor client costs. This is a question of law that attracts the correctness standard of review (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235).

[8] On this appeal, the respondent argued that the amount in dispute totalled less than \$7,000. I cannot agree. Without doubt, as defined in paragraph 2.2(2)(c) of the *Tax Court of Canada Act* and, on the basis of (i) the Notice of Appeal before the Tax Court (Appeal Book, vol. 1 at p. 38); (ii) the Crown's reply to the Notice of Appeal (Appeal Book, vol. 1 at p. 45) and; (iii) the Tax Court's reasons at paragraph 3, the amount in dispute in the appeal before the Tax Court was \$16,536.33.

[9] After considering the parties' submissions, I am of the view that the Tax Court acted without jurisdiction when it awarded costs in favour of the respondent. Our Court held in *Canada v. Moncton Computer Exchange Ltd.*, 2001 FCA 381, 284 N.R. 229 at paragraph 22 that subsection 18.3009(1) "must be read as limiting the jurisdiction of the Tax Court [of Canada] to award costs in any GST or GST/HST appeal under the informal procedure". This provision clearly ousts the Tax Court's discretion to award any costs at all in cases in which the amount in dispute exceeds \$7,000, such as the present case. It follows that the Tax Court erred in law when it awarded costs.

[10] For the foregoing reasons, the appeal should be allowed. In the unique circumstances of this case, each party should bear its own costs.

“Richard Boivin”

J.A.

“I agree

Eleanor R. Dawson J.A.”

“I agree

David Stratas J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-260-14

STYLE OF CAUSE: HER MAJESTY THE QUEEN v.
SHEILA DIFLORIO

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 14, 2015

REASONS FOR JUDGMENT BY: BOIVIN J.A.

CONCURRED IN BY: DAWSON J.A.
STRATAS J.A.

DATED: JANUARY 20, 2015

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SHEILA DIFLORIO

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