

Federal Court of Appeal



Cour d'appel fédérale

Date: 20070920

Docket: A-13-05

Citation:

Between:

QING HUA ZHOU

Appellant

AND

HER MAJESTY THE QUEEN AND MR. SIMON PETIT

Respondents

ASSESSMENT OF COSTS – REASONS

JUDITH CHARLES, ASSESSMENT OFFICER

[1] This is the assessment of costs pursuant to the judgment dated June 8th, 2006 by the Federal Court of Appeal which dismissed the appeal with costs. The appeal was from a decision of the Tax Court of Canada dated January 4, 2005 which allowed, only in part, the Appellant's income tax appeals for the taxation years 1999, 2000 and 2001.

[2] A Bill of Costs and associated written material were submitted by the Respondent and filed on January 31, 2007. The Respondent requested that this assessment proceed in writing.

The Appellant filed opposing submissions on February 22, 2007 to which the Respondent filed rebuttal submissions on March 29, 2007.

The Respondent's Position

[3] The Respondent submitted that the Bill of Costs was prepared in accordance with Tariff B and Rules 400 and 407 of the Federal Court Rules. The disbursements submitted are supported by exhibits attached to the Respondent's affidavit.

The Appellant's Position

[4] The Appellant asserted that the judges of the Federal Court of Appeal never said "awarding the costs to the Respondent". Her written submissions stated that the "appeal is dismissed with costs meant under the Tax Court of Canada Act and Federal Court Rules, the Ministry must pay the reasonable and proper costs of the taxpayer in Gifford v. Canada".

[5] The Appellant claimed that the Respondent never filed and served his Memorandum of Fact and Law and did not ask for the costs in the hearing whereas the Appellant asked for the costs.

[6] The Appellant submitted that the Federal Court of Appeal did not require the whole transcript but the Respondent's counsel ordered his own transcripts and never used it. Therefore, the cost of the whole transcript should be dismissed.

[7] The Appellant stated that one of her appeals in the Tax Court of Canada was to get some compensation and she should get some compensation since the files have lasted five years.

[8] Lastly, the Appellant noted that as of June 2006, the Respondent's counsel said that he had closed the Appellant's file.

The Respondent's Rebuttal

[9] The Respondent submitted that the Order of June 8, 2006 was in regard to the Appellant's appeal which was dismissed with costs. The Order of July 10, 2006 was in regard to the Appellant's application for reconsideration which was dismissed. Because this second order was silent on the costs does not mean that the costs awarded in the June order are removed.

[10] The Respondent explained that in the case of *Gifford v. Canada* (2004 SCC 311) the costs were awarded to the taxpayer because Her Majesty the Queen (Minister of National Revenue) filed the application before the Federal Court of Appeal and not the Appellant.

[11] The Respondent noted that the Memorandum was served upon the Appellant by registered mail on October 18, 2005. The conclusion of the Respondent's Memorandum of Fact and Law requests that the Appellant's appeal be dismissed with costs. The Appellant's request for costs is not applicable to the assessment of the Respondent's Bill of Costs.

[12] Lastly, the Respondent confirmed that the closing of the file referred to by the Appellant is in regard of the Appellant's appeal and that counsel is still in charge of the case regarding the assessment of the Respondent's Bill of Costs.

Assessment

[13] In light of the content of the Respondent's comments in response to the Appellant, I will summarize only those issues which are relevant for disposition of this assessment. Reference is made to Rule 400(1) which states that "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." I have carefully read the Court's Reasons for Judgment of June 8th, 2006 and I have examined the court record. I am satisfied that the amounts claimed in the Respondent's Bill of Cost are reasonable and as such, it will be assessed as submitted under column III of Tariff B.

[14] The Court record shows that on October 14, 2005, the Respondent filed its Memorandum of Fact and Law for which proof of service upon the Appellant was filed on March 1, 2006. The Respondent requested the mid range of 5 units (\$120 per unit) under column III of the Tariff B for Item 19 (Memorandum of Fact and Law). The amount of \$600.00 is allowed. The Respondent seeks 1 unit under column III of Tariff B for Item 20 (Requisition for Hearing). The amount of \$120.00 is allowed. The Respondent seeks 2 units under column III of Tariff B for Item 21 (on a motion to determine content of appeal). The amount of \$240.00 is allowed. The Respondent seeks 2 units under column III of Tariff B for Item 22 (counsel fee on hearing). The

amount of \$300.00 is allowed. The Respondent seeks 1 unit under column III of Tariff B for Item 25 (Services after judgement not otherwise specified). The amount of \$120.00 is allowed. The Respondent seeks 4 units under column III of Tariff B for Item 26 (Assessment of Costs). The amount of \$480 is allowed.

[15] The amount of \$1,500.48 sought for disbursements are fully supported by the evidence presented in the affidavit of Martin Gentile and are therefore allowed.

[16] The Respondent's Bill of Costs in A-13-05 is assessed and allowed in the amount of \$3,360.48 which includes assessable services and disbursements. Accordingly, a certificate of assessment is issued for \$3,360.48.

J Charles

JUDITH CHARLES

ASSESSMENT OFFICER

Halifax, Nova Scotia
September 20, 2007