

Citation: 2008TCC36
Date: 20080117
Docket: 2007-1055(IT)G

BETWEEN:

WEYERHAEUSER COMPANY LIMITED,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

and

HER MAJESTY THE QUEEN IN RIGHT OF
THE PROVINCE OF BRITISH COLUMBIA

Intervenor.

REASONS FOR ORDER AND ORDER

Beaubier, D.J.

[1] This is a motion by the Province of British Columbia to intervene in this appeal. The motion is made under *Rule 28* of this Court's *Rules of General Procedure*, which reads:

28. (1) Where it is claimed by a person who is not a party to a proceeding

(a) that such person has an interest in the subject matter of the proceeding,

(b) that such person may be adversely affected by a judgment in the proceeding, or

(c) that there exists between such person and any one or more parties to the proceeding a question of law or fact or mixed law and fact in common with one or more of the questions in issue in the proceeding,

such person may move for leave to intervene.

(2) On the motion, the Court shall consider whether the intervention will unduly delay or prejudice the determination of the rights of the parties to the proceeding, and the Court may,

(a) allow the person to intervene as a friend of the Court and without being a party to the proceeding, for the purpose of rendering assistance to the Court by way of evidence or argument, and

(b) give such direction for pleadings, discovery or costs as is just.

The Appellant consents to the intervention. The Respondent objects.

[2] This appeal and the Notice of Intervention arise from the wording of three statutes:

1. Subsection 127(1) of Canada's *Income Tax Act* provides a credit against tax otherwise payable for the lesser of (a) 2/3 of any logging tax paid to a province in respect of income for the year from "logging operations" in the province, and (b) 6/3 of the taxpayer's income therefrom. *Regulation 700(i)(d)* excludes from income from those logging operations "income from sources other than logging operations."

2. Section 15 of British Columbia's *Income Tax Act* provides a credit of "1/3 of the logging tax payable and paid to the government."

3. British Columbia's *Logging Tax Act* levies a tax of the lesser of (a) 10% of the taxpayer's "income derived from logging operations in British Columbia", or (b) 150% of the tax credit that would have been allowed under subsection 127(1) of the *Income Tax Act* if the tax described in (a) had been paid.

[3] Thus, British Columbia's *Logging Tax Act* and *Income Tax Act* refer to income "derived" from logging operations, while Canada's *Income Tax Act* refers to income from logging operations.

[4] The actual appeal arises from a federal logging tax credit for 1999 which did not include a credit for taxes from taxable capital gains of the Appellant from the sale of two saw mills in British Columbia and some houses in Ontario which it acquired as part of the purchase of a pulp and paper complex in 1998.

[5] British Columbia's *Logging Tax Act* has its own appeal system to the British Columbia Supreme Court. It is calculated in part with reference to Canada's *Income Tax Act* which gives British Columbia a direct interest in this proceeding.

[6] This Court agrees that British Columbia has an interest in this appeal so as to minimize any possible double taxation on the Appellant, the result of which might affect its operations and income in British Columbia, and thereby adversely affect British Columbia both respecting tax and the effect on business operations of the Appellant and others in British Columbia. Moreover, the question in issue is common to British Columbia and the Appellant both as to fact and law. To allow the intervention would prove more efficient and would better put forward the position of British Columbia, which is integral to the matter in appeal. As a consequence, the interests of justice would be better served by the intervention of British Columbia. It is clear from British Columbia's written argument that its intervention may render assistance to the Court, particularly by way of argument. Finally, this motion was heard on January 15, 2008 at the same time as a Status Hearing which was ordered by this Court because the Court record did not show that the proceedings were moving forward with sufficient speed. Therefore, it does not lie with either party to object to any undue delay.

[7] Therefore, as to the proposed intervention and as to the Status Hearing, it is ordered:

1. The Queen in the Right of British Columbia is granted the status of Intervenor in this appeal for the purposes of argument.

2. Counsel for the Intervenor shall have delivered to him by counsel for the Appellant copies of all pleadings, statements of documents, examinations for discovery, undertakings and any other documents or Orders of this Court. Counsel for the Intervenor shall be entitled to attend all proceedings of this appeal

henceforth, but shall not be entitled to intervene or engage in the proceeding to submit evidence itself or to examine witnesses in the hearing. Counsel for the Intervenor shall be entitled to participate in the argument and to present argument to the Court at the conclusion of the hearing and in the event that a Pre-Hearing Conference might occur.

3. As a result, the Intervenor shall be added to the style of cause of the proceeding and shall henceforth be served with copies of all documents filed in this matter. The address of the Intervenor for these purposes is:

David R. Poore
Ministry of the Attorney General of British Columbia
P.O. Box 9289, STN PROV GOVT
6th Floor – 1175 Douglas Street
Victoria, BC V8W 9J7
Telephone: (250) 356-0020
Facsimile: (250) 387-0700

4. With respect to the Status Hearing itself, it is further ordered that:

The Appellant shall file an Amended Notice of Appeal on or before February 7, 2008, an Amended Reply to which shall be filed on or before February 28, 2008.

The parties are directed to prepare a list of documents pursuant to the *Tax Court of Canada Rules (General Procedure)* and to file and serve the list on the opposing party no later than March 15, 2008.

The examinations for discovery shall be completed by April 15, 2008.

Undertakings given at the examinations for discovery shall be satisfied by May 15, 2008.

The parties shall communicate with the Hearings Coordinator in writing on or before June 15, 2008 to advise the Court whether the case will settle, whether a pre-hearing conference would be beneficial or whether a hearing date should be set. In the latter event, the parties may file a joint application to fix a time and place for the hearing in accordance with section 123 of the *Tax Court of Canada Rules (General Procedure)*.

[8] There is no order as to costs.

Signed at Vancouver, British Columbia this 17th day of January, 2008.

“D.W. Beaubier”

Beaubier, D.J.

CITATION: 2008TCC36

COURT FILE NO.: 2007-1055(IT)G

STYLE OF CAUSE: Weyerhaeuser Company Limited v. The Queen

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: January 15, 2008

REASONS FOR ORDER BY: The Honourable Justice D.W. Beaubier

DATE OF ORDER: January 17, 2008

APPEARANCES:

Counsel for the Appellant: Wendy A. King
Counsel for the Respondent: David Jacyk
Counsel for the Intervenor: David R. Poore

COUNSEL OF RECORD:

For the Appellant: Wendy A. King

Name: Wendy A. King

Firm: Weyerhaeuser Company Limited

For the Respondent: John H. Sims, Q.C.
Deputy Attorney General of Canada
Ottawa, Canada

For the Intervenor: David R. Poore
The Attorney General of British Columbia