

Docket: 2005-1062(IT)G

BETWEEN:

JONAS FABER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Conference call held on July 31, 2008 at Prince George, British Columbia

Before: The Honourable Justice L.M. Little

Appearances:

For the Appellant: The Appellant himself
Counsel for the Respondent: Nadine Taylor Pickering

ORDER

IN THE Reasons for Judgment issued by the Tax Court of Canada dated July 3, 2008 it was stated the question of costs would be discussed during a conference call with the parties;

AND UPON hearing from both parties during a conference call held in Prince George, British Columbia on July 31, 2008;

IT IS ORDERED THAT the Respondent should be awarded \$300.00 relating to the successful Notice of Motion filed with respect to the amendment of the Notice of Appeal filed by the Appellant.

IT IS FURTHER ORDERED THAT no additional costs be awarded to either party.

Signed at Vancouver, British Columbia, this 8th day of January 2009.

“L.M. Little”

Little J.

Citation: 2009 TCC 9
Date: 20090108
Docket: 2005-1062(IT)G

BETWEEN:

JONAS FABER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Little J.

A. Facts

[1] The appeal filed by the Appellant was heard in Kelowna, British Columbia in October 2007. On July 3, 2008 a Judgment was issued.

[2] The appeal mainly dealt with various expenses claimed by the Appellant and denied by the Minister of National Revenue (the “Minister”).

[3] A number of the expenses claimed by the Appellant were allowed and a number of the expenses that had been claimed were disallowed.

[4] During the hearing, Counsel for the Respondent requested that a conference call be held to deal with the question of costs.

[5] A conference call was held from Prince George, British Columbia on July 31, 2008.

[6] During the conference call, Counsel for the Respondent requested that the Respondent be awarded party and party costs for the counsel fee and the disbursements.

[7] As noted above, the result of the Judgment is that both parties were partially successful.

[8] Since success is divided, I am not prepared to award any costs for the trial. However, the Respondent did succeed in a Motion heard by Deputy Judge Rowe. The Respondent had argued that the Notice of Appeal was too lengthy and Deputy Judge Rowe agreed to strike a large portion of the Notice of Appeal.

[9] In my opinion, the Respondent should be awarded \$300.00 relating to the successful Notice of Motion filed with respect to the lengthy Notice of Appeal filed by the Appellant.

[10] In deciding that no further costs should be awarded I am relying upon section 147 of the *Tax Court of Canada Rules (General Procedure)* (the “Rules”).

[11] The general rule under section 147 of the *Rules*, effective at the time the hearing of the appeal, provides that the Court has the discretion to determine the awarding of costs. Subsection 147(1) provides:

147(1) Subject to the provisions of the Act, the Court shall have full discretionary power over the payment of the costs of all parties involved in any proceeding, the amount and allocation of those costs and determining the persons by whom they are to be paid.

[12] Similarly, subsection 147(5) confirms the Court has full discretionary power to award or refuse to award costs:

147(5) Notwithstanding any other provision in these rules, the Court has the discretionary power,

(a) to award or refuse costs in respect of a particular issue or part of a proceeding,

(b) to award a percentage of taxed costs or award taxed costs up to and for a particular stage of a proceeding, or

(c) to award all or part of the costs on a solicitor and client basis.

[13] In the case *Myers’ Humane Information Systems v. Her Majesty the Queen*, [1996] 1 C.T.C. 2801, Justice Bowman dismissed the appeal, but decided not to award costs against the Appellant. At paragraph 48, Justice Bowman said:

However, as to costs, the Court has a wide discretion. We have a certain ability not to award costs.

[14] In *Lau v. Her Majesty the Queen*, 2004 FCA 10, 2004 G.T.C. 1079, the Federal Court of Appeal considered the Tax Court Judge's exercise of discretion with respect to the awarding of costs. In reviewing the Tax Court's decision to awarding lump sum costs to the appellant and the rules under section 147 of the *Rules*, the Federal Court of Appeal held:

It can be seen that the awarding of costs under rule 147 is highly discretionary although, of course, that discretion must be exercised on a principled basis. We are all of the view that it was so exercised by the Tax Court and that no basis has been shown for interfering with the judgment below.

[15] My conclusion is based upon the words contained in subsection 147(1) of the *Rules* and the Court decisions referred to above.

Signed at Vancouver, British Columbia, this 8th day of January 2009.

“L.M. Little”

Little J.

CITATION: 2009 TCC 9

COURT FILE NO.: 2005-1062(IT)G

STYLE OF CAUSE: Jonas Faber and
Her Majesty the Queen

PLACE OF CONFERENCE CALL: Prince George, British Columbia

DATE OF CONFERENCE CALL: July 31, 2008

REASONS FOR ORDER BY: The Honourable Justice L.M. Little

DATE OF ORDER: January 8, 2009

APPEARANCES:

For the Appellant: The Appellant himself
Counsel for the Respondent: Nadine Taylor Pickering

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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