

Docket: 2003-260(GST)G

BETWEEN:

COUNTRY WIDE PLUMBING & HEATING LTD.,
RICK QUENVILLE and DON LAVALLEE,

Appellants,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion determined pursuant to *Rule 69* of the
Tax Court of Canada Rules (General Procedure)

By: The Honourable Justice C.H. McArthur

Agent for the Appellants: Don Lavallee
Counsel for the Respondent: Michael Ezri

ORDER

Upon motion by the Respondent for an Order pursuant to *Rule 172(1)(a)* of the *Tax Court of Canada Rules (General Procedure)* to amend the wording of the judgment dated February 2, 2006, issued in this appeal;

AND UPON having read the materials filed, and the written submissions of both parties filed pursuant to *Rule 69*;

IT IS ORDERED that the Respondent's motion is denied.

Signed at Ottawa, Canada, this 9th day of September 2009.

“C.H. McArthur”

McArthur J.

Citation: 2009 TCC 446
Date: 20090909
Docket: 2003-260(GST)G

BETWEEN:

COUNTRY WIDE PLUMBING & HEATING LTD.,
RICK QUENVILLE and DON LAVALLEE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

McArthur J.

[1] This is a motion for an Order pursuant to *Rule 172(1)* of the *Tax Court of Canada (General Procedure)* (the *Rules*) amending the judgment dated February 2, 2006, in these three appeals from dismissed to ...dismissed, with costs.

[2] The facts include the following:

Reasons for Judgment were delivered in Sudbury, Ontario on January 26, 2006.

On February 2, 2006, the Court issued a Judgment in each of these cases dismissing the Appellants' appeals. The issue of costs was not addressed. The Respondent requested that the appeals be dismissed with costs in the Replies of the Notices of Appeal.

It was brought to the Respondent's attention by the Court during the week of May 11, 2009 that the Judgments did not address the issue of costs. The Court advised the Respondent that, in order to proceed with the taxation of costs, it had to file a motion with the Court to amend the Judgments.

The Respondent requests that this court consider the terms of the Judgment dated February 2, 2006, in each appeal, pursuant to *Rule 172(1)(a)* of the *Rules* because

the matter of costs that should have been dealt with has been overlooked or accidentally omitted.

The slip rule is available in cases in which the court has made an accidental mistake or omission, or has given a Judgment that manifestly does not accord with the reasons given. See *Highway Customs Warehouse Ltd. v. The Queen* 2007 TCC 715, 2008 D.T.C. 2500 (T.C.C.) and *Bujnowski v. The Queen*, 2006 FCA 32, D.T.C. 6071 (F.C.A.).

[3] To grant the motions would be stretching the *Rules* far beyond what is intended and reasonable.

[4] Rules 168(a) and (b) , read as follows:

168. Where the Court has pronounced a judgment disposing of an appeal any party may within ten days after that party has knowledge of the judgment, move the Court to reconsider the terms of the judgment on the grounds only,

(a) that the judgement does not accord with the reasons for judgment, if any, or

(b) that some matter that should have been dealt with in the judgment has been overlooked or accidentally omitted.

[5] Several years have passed since the Judgments were issued and it would be an abuse of process to amend at this stage. I agree in principle with the Appellant's response dated August 6, 2009.

[6] The Respondent's motions are denied.

Signed at Ottawa, Canada, this 9th day of September 2009.

"C.H. McArthur"

McArthur J.

CITATION: 2009 TCC 446

COURT FILE NO.: 2003-260(GST)G

STYLE OF CAUSE: COUNTRY WIDE PLUMBING &
HEATING LTD., RICK QUENVILLE and
DON LAVALLEE and
HER MAJESTY QUEEN

REASONS FOR ORDER BY: The Honourable Justice C.H. McArthur

DATE OF ORDER: September 9, 2009

Agent the Appellants: Don Lavallee
Counsel for the Respondent: Michael Ezri

COUNSEL OF RECORD:

For the Appellants:

Name: N/A

Firm: N/A

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