

Dockets: 2002-3402(IT)G
2002-3401(IT)G

BETWEEN:

PIERRE GILBERT,
ADELA GILBERT

Appellants,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

CERTIFICATE OF TAXATION

I CERTIFY that I have taxed the party and party costs of the appellants in this case pursuant to subsection 153(1) of the *Tax Court of Canada Rules (General Procedure)* and I ALLOW THE SUM OF \$3,493.72.

Signed at Toronto, Ontario, this 4th day of June 2010.

"Johanne Parent"
Taxing Officer

Translation certified true
on this 22nd day of June 2010.

Elizabeth Tan, Translator

Citation: 2010 TCC 309
Date: 20100604
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BETWEEN:

PIERRE GILBERT,
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Appellants,

and

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Respondent.

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REASONS FOR TAXATION

Johanne Parent, T.O.

[1] On July 7, 2005, the Court (the Honourable Justice Louise Lamarre-Proulx) allowed the appeals from the notices of assessment numbered 30123 and 30124, with costs. Following the appeals and cross-appeals of this decision, the Federal Court of Appeal rendered the following decision on April 4, 2007:

I would allow the appeal with costs, I would dismiss the cross-appeal and I would set aside the decision of the Tax Court of Canada. Deciding as the Tax Court of Canada should have decided, I would dismiss the appeal filed by the respondent against the Minister's assessment with costs.

At the parties' request, the respondent's bill of costs was heard without a personal appearance. On this, a letter was sent to the parties on March 3, 2010, confirming that the taxation of the respondent's bill of costs would proceed by written submissions, and establishing time lines for producing the written arguments. Further to this directive, the appellants, representing

themselves, did not produce any arguments regarding the documents previously submitted by the respondent, represented by Marie-Aimée Cantin, counsel. It must be noted that the appellants' correspondence challenging the bill of costs dated April 3 and July 7, 2009, enclosed with the general correspondence attached to the respondent's documents, was taken into consideration during the taxation.

[2] In their correspondence with the respondent challenging the bill of costs, the appellants indicated that compensation should be set between the costs awarded in their favour by the Tax Court of Canada and those awarded to the respondent by the Federal Court of Appeal.

I cannot agree with this argument. As indicated in the Federal Court of Appeal decision cited in the first paragraph of these reasons, the court "set aside the decision of the Tax Court of Canada." Therefore, it is not relevant to consider setting compensation between the decisions of the Federal Court of Appeal and the Tax Court of Canada considering the latter decision was set aside.

[3] In a second argument, the appellants claim that the respondent was successful before the Federal Court of Appeal by misrepresenting the facts. As a result, the appellants filed a motion in the Superior Court of Québec to obtain compensatory damages. The respondent accepted that the taxation in their bill of costs would proceed only after the case before the Superior Court was settled. The present taxation therefore proceeds following the Superior Court of Québec decision dated May 13, 2010. Regarding the appellants' second argument, the powers granted to the taxing officer are specifically covered by Rule 157 of the *Tax Court of Canada Rules*. My role as a taxing officer is not to rule on decisions for which costs are requested. Review and appeal mechanisms exist for such cases.

[4] Lastly, the appellants indicate they disagree with the amounts in the bill of costs, but do not explain their reasoning for this argument.

Considering the lack of arguments and considering the neutrality granted to officers of the Court, I cannot take the parties' place and act in their name to

challenge the bill of costs. This being said, the taxing officer cannot grant costs or expenses that would be in conflict with the Court's decision or the *Tax Court of Canada Rules*.

Considering the above, the costs claimed for counsel services (Tariff B) are allowed as requested.

I reviewed the disbursements claimed and the justification for each. The disbursements are justified and considered necessary and reasonable costs for the conduct of this case. They will therefore be allowed as claimed in the bill of costs.

[5] The respondent's bill of costs is taxed and allowed in the amount of \$3,493.72

Signed at Toronto, Ontario, this 4th day of June 2010.

"Johanne Parent"

Taxing Officer

Translation certified true
on this 22nd day of June 2010.

Elizabeth Tan, Translator