

Docket: 2004-3538(IT)G

BETWEEN:

GEORGE ALBERTO DEMARCHI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

CERTIFICATE OF COSTS

I CERTIFY that I have taxed the party and party costs of the Respondent in this proceeding under the authority of subsection 153(1) of the *Tax Court of Canada Rules* (General Procedure) and I ALLOW THE SUM of \$ 8,246.95.

Signed at Toronto, Ontario, this 11th day of January 2011.

“Bruce Preston”

Taxing Officer

Citation: 2011 TCC 18
Date: 20110111
Docket: 2004-3538(IT)G

BETWEEN:

GEORGE ALBERTO DEMARCHI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR TAXATION

Bruce Preston, T.O., T.C.C.

[1] This taxation came on for hearing by way of a telephone conference call on Wednesday, December 22, 2010. It follows the decision of the Honourable Justice McArthur of this Court dismissing the appeal, with costs to the Respondent.

[2] The Appellant was self-represented, and the Respondent was represented by Mr. Bobby Sood.

[3] Counsel for the Respondent submitted that the Court awarded party and party costs and that the bill was prepared in accordance with Tariff B of the *Tax Court of Canada Rules (General Procedure)*. It was further submitted that the fees and disbursements are straight forward.

[4] The Appellant commenced by submitted that he was not aware that costs had been awarded in the Tax Court of Canada proceeding. After referring the Appellant to the Judgment of the Court dated November 13, 2007, the Appellant understood that costs had been awarded.

[5] The Appellant submitted that the charge for photocopying seems excessive. It was argued that \$0.095 per page for photocopying is expensive and that photocopying is available for \$0.03 per page.

[6] The Respondent made no reply concerning photocopying, however, I find the amount claimed to be reasonable. Although it may be possible to obtain duplication services for \$0.03 per page, the amount the Respondent was charged by Ikon Office Solutions has been proven and is not excessive. Further, the total amount claimed is reasonable considering the file and the amounts at issue.

[7] During the hearing, the Appellant requested clarification as to why an amended Bill of Costs had been filed.

[8] In reply to the Appellant's query, the Respondent referred to the letter dated May 28, 2010 found as exhibit D to the Affidavit of Irena Krakowska and submitted that this matter had been explained to Mr. Demarchi in the letter. In support of this counsel referred the *James v. HMQ*, 2001 TCJ 675 at paragraph 17 which held that it is within the authority of Taxing Officers to amend the Class of an appeal if it is found that the taxpayer made an error in determining the class of the appeal. Further, referring to paragraphs 1 and 3 of the Reasons for Judgment, counsel argued that as the aggregate of all amounts in issue in this appeal are greater than \$50,000.00 the Bill of Costs was amended to make a claim under Class B, rather than Class A.

[9] Having reviewed the decision in *James v. HMQ (supra)*, and having read the judgment of the Court, the Class of the appeal is amended and the Respondent is allowed to claim for services of counsel under Class B as set out in the *Tax Court of Canada Rules (General Procedure)*.

[10] In answer to a question concerning hearing dates, counsel for the Respondent concluded by requesting an amendment to the Bill of Costs. Counsel submitted that the Respondent had inadvertently omitted two hearing days when calculating the claim under 1(1)(h). It was submitted that 4 days, not 2 days, should have been claimed for a total of \$6,000.00 under 1(1)(h), conduct of the hearing for each day or part thereof.

[11] The Appellant submitted that although the hearing was held on 4 days some of the days were not complete days and that a claim for 2 days reflected reasonable costs for the hearing.

[12] In reply counsel for the Respondent submitted that the Respondent was completely successful in the matter, including any motions filed. It was further

submitted that there is no reason to discount the amount claimed as the Bill of Costs reflects only a small percentage of the amount at issue in the appeal.

[13] Concerning the Respondent's request to amend the Bill of Costs, having reviewed the abstracts of hearing, it is apparent that the hearing proceeded on October 2 and 3, 2006 and October 31 and November 2, 2007. However, on November 2, 2007 the hearing was resumed for somewhat less than 30 minutes for the Court to render judgment. Considering the length of the sitting on that particular day and the fact that the parties were not required to make submissions, I am reluctant to allow the Respondent's claim for November 2, 2007. In *Flaherty v. The Queen* 2009 TCC 223 at paragraph 4, the Court held:

With respect to counsel fees, the disagreement is whether, in the case of a one-day trial followed by reasons being delivered on a later day, the tariff contemplates two half-days or three half-days. I have not been referred to any previous judicial pronouncement on the subject. In the circumstances of this case, I believe a fair and reasonable result on costs is reached by providing for only two half-day counsel fees. That is not to say that in another case, attending to hear delivery of oral reasons can not be reflected in costs awarded. I leave that open. I will therefore fix counsel fees at \$1,185.

[14] Although the decision in *Flaherty* concerns the costs of an informal proceeding, I find that the principle may be applied to the present matter. Therefore, in light of the above reasons, I believe that in the circumstances of this case, a fair and reasonable result is to allow the Respondent to amend her Bill of Costs and allow the Respondent's claim under 1(1)(h) for 3 hearing days and the amount of \$4,500.00.

[15] As the Appellant made no submissions concerning the other services of counsel and disbursements claimed, they will be allowed as presented.

[16] For the above reasons, the Bill of Costs is taxed, and I allow the sum of \$8,246.95.

Signed at Toronto, Ontario, this 11th day of January 2011.

“Bruce Preston”

Taxing Officer