

Citation: 2012 TCC 260

Date: 20120719

Docket: 2008-6(IT)I

BETWEEN:

A & E PRECISION FABRICATING  
AND MACHINE SHOP INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Docket: 2008-5(IT)I

AND BETWEEN:

CENTRAL SPRINGS LIMITED,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

(Edited from the transcript of Reasons for Judgment delivered orally from the Bench on April 5, 2012 at St. John's, Newfoundland)

Campbell J.

[1] Let the record show that I am delivering oral reasons in the matter of the appeals of Central Springs Limited and A & E Precision Fabricating and Machine Shop Inc.

[2] These appeals are from a taxation of costs by taxing officer Barbara Tanasychuk.

[3] These appeals have a very lengthy history dating back to 2005 when, according to the Appellant's Written Submissions, CRA seized property and began enforcement proceedings based on arbitrary assessments. The litigation itself has spanned several courts, including the Tax Court, the Federal Court and the Supreme Court of Newfoundland and Labrador.

[4] The appeals were heard pursuant to the informal procedure before Justice Boyle of this Court on June 3rd and 4th, 2010. On October 22nd, 2010, Justice Boyle allowed the appeals stating that the Respondent's case was without merit in law or in respect to the evidence. He allowed the parties 30 days to provide written submissions on costs. On December 10th, 2010, Justice Boyle issued his order on costs in which he allowed costs to the Appellants for the appeals which he heard and also in respect to the preliminary proceedings which were before Justice Bowie, as well as myself. There were to be costs as follows and I quote from the order:

- i) computed in accordance with the Court's Informal Procedure Rules 10 through 11;
- ii) on the basis of a single counsel fee between the Appellants for the hearing dates and the written representations on costs; and lastly
- iii) together with all reasonable disbursements.

[5] The Appellants' Bill of Costs was presented to the Respondent and because there was no agreement, this matter proceeded to a taxation of costs. A teleconference was held on April 15th, 2011 and eventually the taxing officer issued her Certificate of Costs on July 29th, 2011 in the amount of \$16,145.00. The Appellants filed an application to have the cost award reconsidered on August 12th, 2011; however, the law clerk working with the Appellants' counsel was given incorrect information by this Court and advised to file the application in the Federal Court of Appeal. Shortly after this mix up, the application was correctly filed in the Tax Court on August 29th, 2011; however, the Respondent brought a motion to strike the application contending that it had been filed in the wrong court and in addition was out of time. This Court directed the Appellants to file the appropriate documentation and on October 19th, 2011, Justice Woods issued an order allowing the Appellants' application to proceed. This provides a very brief history and overview of how this application came before me yesterday.

[6] I must decide if any variation should be made to the taxation of costs made by the taxing officer.

[7] The taxing officer's Certificate of Costs awarded the following amounts:

- a) \$11,710.00 for counsel fees;
- b) \$1,522.30 for HST on those counsel fees;
- c) \$1,188.60 for photocopying; and
- d) \$1,724.60 for witness fees for Donald Farrell

for a total of \$16,145.50.

[8] Rule 14 of the *Tax Court of Canada Rules* under the Informal Procedure permits any party to appeal to this court from a taxation of costs. On an appeal to this court from a taxing officer's certificate, I must determine whether that taxing officer proceeded on any erroneous principle. Justice Trudel stated the following in *Canada v Sport Collection Paris Inc.*, [2008] F.C.J. No. 1493 at paragraph 5 in respect to this and I quote:

...It is trite law that the Court will intervene in a taxing officer's decision only if he or she has made an error in principle (*R. v. Monro*) [1998] 4 C.T.C. 89 (FCA) or if his or her decision is so unreasonable that it is contrary to applicable principles.

[9] As pointed out in *IBM Canada Ltd. v Xerox of Canada Ltd.*, [1976] F.C.J. No. 124 at paragraph 7, a taxing officer's discretion should, and again I quote:

...not to be interfered with unless the amounts allowed are so inappropriate or his decision is so unreasonable as to suggest that an error in principle must have been the cause...

[10] Justice Boyle's order awarded a single set of counsel fees as between the Appellants respecting the hearing and the written submissions on costs. However, at paragraph 26 of the decision of the taxing officer, a single counsel fee for each of the Appellants was awarded. This was an error in principle on the part of the taxing officer; however, since the Respondent accepted this error and it was in favour of the Appellants, I do not believe this on its own results in any error in principle which would warrant interference with the taxing officer's discretion.

[11] For the taxation of costs, the Respondent consented, and the taxing officer awarded, HST on the counsel fees taxed. The Appellants seek HST on all of the counsel fees that were charged and not just on those taxed. The Appellants rely on the affidavit of legal assistant Cheryl Lamkin that the amount claimed for HST was reasonable. At the taxation for costs, Respondent counsel consented to an allowance

of 13 percent for HST on those counsel fees. The taxing officer was correct in these circumstances in awarding HST of 13 percent on those counsel fees, which she allowed in the amount of \$1,522.30. Rule 11.2(2) governs this matter. It reads:

There may be allowed all services, sales, use or consumption taxes and other like taxes paid or payable on any counsel fees and disbursements allowed if it is established that such taxes have been paid or are payable and are not otherwise reimbursed or reimbursable in any manner whatever...

[12] In respect to the witness fees and first in respect to Donald Farrell, the taxing officer concluded that Mr. Farrell, the Appellants' accountant was not called as an expert and pursuant to Rule 12(1), the Appellants could recover \$75.00 daily, plus reasonable and proper transportation and living expenses. According to the Certificate of Costs the Appellants did not provide receipts for Mr. Farrell's claimed expenses, however, the Respondent was prepared to consent to the amount of \$1,724.60 for witness fees and expenses. The Respondent did not agree to pay the parking charges, the fees for Mr. Farrell's preparation and advice, nor a portion of the claimed hotel accommodations. The taxing officer noted, at paragraph 31, that the hotel expenses claimed on the Bill of Costs were actually higher than the amount contained in the two invoices submitted by Mr. Farrell. In addition, she noted that those invoices did not include a claim for parking expenses, although they had been included in the Bill of Costs. The taxation of the witness fees relating to Mr. Farrell, therefore, are reasonable based on the lack of supporting documentation and the inconsistencies between the invoices and the Bill of Costs.

[13] With respect to the Appellant's argument that in relying on Rule 12, the taxing officer made an error because Justice Boyle's order referred only to Rules 10 and 11. I do not believe that the taxing officer made an error in principle in relying on Rule 12 even though it was not specifically referenced in Justice Boyle's order. The rule is there and I do not believe that it should be ignored by the taxing officer in arriving at an appropriate and fair amount simply because of an omission or lack of reference to that rule in the order. In any event, Justice Boyle ordered payment of reasonable disbursements and Farrell's disbursements can be covered off in that reference.

[14] With the inconsistencies between the Bill of Costs amounts in respect to several of those disbursements and the actual invoices, the taxing officer made no error in principle which I am able to vary.

[15] The second set of witness fees, in respect to Eli Humby, were disallowed by the taxing officer because she concluded that although he was in attendance at the

hearing before Justice Boyle, he was not called as a witness to give evidence. Even though Mr. Humby appeared and gave evidence before Justice Bowie in that preliminary matter, as a director of the Appellants, he is not entitled to witness fees and expenses unless called upon by counsel to testify which he was not. (Rule 12(1.1)). Again I have no authority to interfere in the taxing officer's conclusions.

[16] Finally in respect to the remaining disbursement of copying charges and courier fees, the taxing officer states, in respect to copying expenses, that she had no documentation respecting the amounts claimed and she had no information in respect to the number of copies made. In any event, she awarded \$1,188.60 for copying costs. In respect to courier charges, without any documentation and counsel's admission that he personally delivered some of the documents, she did not allow any amount for courier expenses. Appellants' counsel pointed out that he is a sole practitioner who does much of his own copying. Although I appreciate this position and acknowledge that it would be difficult in these circumstances to calculate an exact amount, I believe he could have attempted to provide lists of various documents with the numbers of copies of these and approximate dates. This would be an approximate determination, but I believe an appropriate one to which a reasonable rate could have been applied. The onus again is upon the Appellants' counsel to show how he arrived at the figure that he is submitting for copying charges. Without any such submission, the figure arrived at by the taxing officer again is reasonable and I am unable to interfere with her award with respect to courier and copying charges.

[17] Finally the Appellants allege that no amount of this award of costs has been paid by the Respondent. The Respondent states that the costs had been applied against the Appellants' tax debt. There is abundant caselaw that states that this Court has no jurisdiction to interfere in the Minister's discretionary power to set-off an award of costs and, consequently, I make no further comment in this regard.

[18] In summary, I have no authority to warrant my interference with the taxing officer's Certificate of Costs because I have concluded that she made no error of law or principle in that award. In reviewing the materials on this file, it appears that the Appellants have done battle with CRA for approximately seven years which has resulted in much hardship, financial and otherwise for Mr. Humby. Much of this appears to be the result of arbitrary actions taken by CRA; however, based on the jurisprudence and the rules of this Court, I am unable to interfere with the taxation of costs, as much as I would have liked to in order to assist the Appellants.

[19] I am therefore awarding no costs to the Respondent, although a request of \$500.00 in costs was made yesterday.

Signed at Summerside, Prince Edward Island this 19th day of July 2012.

“Diane Campbell”

---

Campbell J.

CITATION: 2012 TCC 260

COURT FILE NO.: 2008-6(IT)I and  
2008-5(IT)I

STYLE OF CAUSE: A & E PRECISION FABRICATING AND  
MACHINE SHOP INC. AND HER  
MAJESTY THE QUEEN, AND  
  
CENTRAL SPRINGS LIMITED AND HER  
MAJESTY THE QUEEN

PLACE OF HEARING: St. John's, Newfoundland

DATE OF HEARING: April 4, 2012

REASONS FOR JUDGMENT BY: The Honourable Justice Diane Campbell

DATE OF ORAL JUDGMENT: April 5, 2012

APPEARANCES:

For the Appellant:	Mr. Robert Anstey
Counsel for the Respondent:	Jill Chisholm

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: Myles J. Kirvan  
Deputy Attorney General of Canada  
Ottawa, Canada