

BETWEEN:

ANN KLUNDERT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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| Counsel for the Appellant: | Peter Blokmanis |
| Counsel for the Respondent: | Elizabeth (Lisa) McDonald Laura Zampano |

ORDER

WHEREAS the Respondent has brought a motion for an Order requesting a reconsideration of the award of costs in this appeal pursuant to subsection 147(7) of the *Tax Court of Canada Rules (General Procedure)* (the “Rules”);

AND WHEREAS, the Respondent requested that she be awarded costs;

AND WHEREAS, the Appellant opposed the motion;

AND WHEREAS, the motion was decided on consideration of the parties written representations in accordance with section 69 of the Rules;
UPON considering the parties’ written representations;

THIS COURT ORDERS that:

1. The Respondent was substantially successful in this appeal and she is awarded costs in the appeal;
2. Costs for this motion were not requested and none is granted.

Signed at Ottawa, Canada, this 7th day of September 2016.

“V.A. Miller”

V.A. Miller J.

Citation: 2016TCC192
Date: 20160907
Docket: 2013-3531(IT)G

BETWEEN:

ANN KLUNDERT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

V.A. Miller J.

[1] On May 26, 2016, I gave Judgment in this appeal. Although the appeal was allowed, I awarded no costs. On June 16, 2016, the Respondent brought a motion in which she requested that I reconsider my decision with respect the award of costs pursuant to subsection 147(7) of the *Tax Court of Canada Rules (General Procedure)* (the “*Rules*”).

[2] In her motion, the Respondent has relied on the following grounds:

- a) The Respondent was the more successful party in the appeal and the cost award should reflect the result and the amount of the proceeding; and,
- b) There were additional factors, including complexity of issues and delay in bringing the matter to trial that justify an award of costs to the Respondent.

[3] The Appellant opposed the motion. She submitted that since there was mixed success in this appeal each party should bear its own costs.

[4] This motion was decided on consideration of the parties’ written representations in accordance with section 69 of the *Rules*.

[5] I note that my Judgment of May 26, 2016 has been appealed.

[6] At the hearing of the appeal, the Respondent asked that the appeal be dismissed with costs. However, I did not request further submissions on costs from the parties after I had reached a decision with respect to the merits of the appeal.

Analysis

[7] It is my view that there is no merit to the Respondent's arguments with respect to delay and the complexity of the issues.

[8] This appeal was commenced on September 20, 2013. It was initially set to be heard on November 16, 2015. The Appellant requested an adjournment because she had retained new counsel and the Respondent consented to the request. The appeal was heard on February 3, 2016, two and one half months after the initial set down date. I find that the Appellant did not delay in prosecuting her appeal.

[9] The Appellant raised the following four issues in her Notice of Appeal:

- a) The notice of assessment was not mailed to her in June 1999;
- b) There were improper collection actions by the Canada Revenue Agency ("CRA");
- c) The assessment violated her rights under the Charter of Rights and Freedoms;
- d) The money transferred to her was held on trust for her spouse. In the alternative, if there was a transfer, she provided consideration for the transfer.

[10] The Charter issue was abandoned at the beginning of the hearing and I found that the issues raised in (a) and (b) above were not properly before me. However, it is my view that a litigant should not be penalized in costs simply because she raised issues which she either abandoned or on which she was not successful: *RMM Canadian Enterprises Inc v R*, [1997] 3 C.T.C. 2103 (TCC) at paragraph 5.

[11] I note that the Respondent did not believe that the issues at (a) and (b) were frivolous or untenable. She called a CRA collections officer to refute the Appellant's arguments with respect to these issues.

[12] The Appellant was successful in demonstrating that she gave consideration for the transfer of funds to her bank account. She tendered documentary evidence which supported that she had paid her spouse's business expenses in the amount of \$3,614.51. The appeal was allowed on this basis.

[13] However, there is merit to the Respondent's position that I should have considered the amount in dispute in making my decision concerning costs.

[14] The assessment issued against the Appellant was in the amount of \$959,403.03. However, at the hearing of this appeal, the amount outstanding on this section 160 assessment and the amount at issue was \$145,367.12.

[15] When I consider the amount in dispute, I find that the Respondent was substantially successful. In the circumstances, I have reconsidered my decision and I award costs to the Respondent.

Signed at Ottawa, Canada, this 7th day of September 2016.

“V.A. Miller”

V.A. Miller J.

CITATION: 2016TCC192
COURT FILE NO.: 2013-3531(IT)G
STYLE OF CAUSE: ANN KLUNDERT AND THE QUEEN
PLACE OF HEARING: Victoria, British Columbia
DATE OF HEARING: Motion by Written Submissions
REASONS FOR ORDER BY: The Honourable Justice Valerie Miller
DATE OF ORDER: September 7, 2016

APPEARANCES:

Counsel for the Appellant: Peter Blokmanis
Counsel for the Respondent: Elizabeth (Lisa) McDonald
Laura Zampano

COUNSEL OF RECORD:

For the Appellant:

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