

Docket: 2007-2690(IT)G

BETWEEN:

DAVID ANTHONY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion heard on October 10, 2007 at Toronto, Ontario.

Before: The Honourable Justice Wyman W. Webb

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Lesley L'Heureux

ORDER

The motion by the Respondent to dismiss the appeal is allowed, with costs, except that the appeal is quashed.

Signed at Halifax, Nova Scotia, this 17th day of October 2007.

“Wyman W. Webb”

Webb J.

Citation: 2007TCC606
Date: 20071017
Docket: 2007-2690(IT)G

BETWEEN:

DAVID ANTHONY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Webb J.

[1] The Appellant was carrying on his own business in 2001 and 2002. The Appellant was reassessed in relation to certain matters related to his income for these two years. The Appellant and his former accountant had a meeting with the auditor for the Canada Revenue Agency (“CRA”) in relation to these reassessments and following that meeting a proposal of settlement was made by letter dated February 1, 2007 from the auditor for the CRA to the Appellant. As part of the proposed settlement the Appellant was required to sign a waiver of his appeal rights for both 2001 and 2002 in respect of his business income and expenses.

[2] The Appellant signed the waiver and subsequently filed a Notice of Appeal to this Court in relation to additional capital cost allowance that he was claiming in 2001. The issue in this motion is whether the Appellant had signed a valid waiver of his rights of appeal in relation to this claim for additional capital cost allowance for his 2001 taxation year.

[3] The wavier was attached to the Affidavit submitted by the Respondent in support of this motion and the Appellant confirmed that he signed this waiver. The Appellant also confirmed that he can read and understand English.

[4] The waiver itself includes the following:

I waive any right of objection or appeal to the 2001 and 2002 taxation years in respect of Business Income and Expenses, on the condition that Canada Customs and Revenue Agency reassesses as follows:

1. To allow additional business expenses of \$3641 for tooling expenses, \$6874 for Capital Cost Allowance and \$3374 for cash purchases, which represents \$1000 for supplies and \$2374 for motor vehicle expenses for the 2001 taxation year.
2. To remove business income of \$162,365 from your 2002 taxation year and to reallocate this income and the corresponding expenses to your corporate tax return for the fiscal year ending July 31, 2002.

I am familiar with subsections 165(1.2) and 169(2.2) of the Income Tax Act, which read as follows, and understand that I will be precluded from filing an objection or appeal with respect to those issues:

[5] The waiver then included the full text of subsections 165(1.2) and 169(2.2) of the *Income Tax Act*.

[6] The reference to “those issues” in the third paragraph from the waiver that is quoted above raises an issue with respect to which are the “those issues” that are referred to in this paragraph. However the first paragraph quoted above from the waiver is clear and this is the paragraph which includes the waiver by the Appellant. This paragraph clearly provides that the Appellant was waiving any right of objection or appeal to the 2001 and 2002 taxation years in respect of business income and expenses. The Appellant had argued that the conditions that were referred to in paragraphs numbered 1 and 2 of the waiver do not include any conditions related to the additional capital cost allowance that is referred to in the appeal that is in question in this motion.

[7] In paragraph 1 of the Notice of Appeal the Appellant states as follows:

ISSUE TO RESOLVE

REASSESSMENT OF PERSONAL BUSINESS INCOME AND EXPENSES
FOR 2001 TAX YEAR.

SPECIFICALLY (CCA) DEPRECIATION OF MACHINERY OR EQUIPMENT IN THE AMOUNT OF \$28,290.00 FOR 2001 TAX YEAR FOR MACHINERY OR EQUIPMENT USED IN THE ENTIRE TAX YEAR TO GENERATE BUSINESS INCOME. SEC. 20(1)(A), SEC. 13(27)(A).

[8] The issue that the Appellant is trying to appeal relates to additional capital cost allowance for 2001 which would be an additional business expense for 2001. This claim for additional capital cost allowance by the Appellant for 2001 had been discussed with the auditor for CRA but had been rejected by the CRA auditor. The right to appeal in relation to additional business expenses that were not allowed by CRA was waived by the Appellant under the waiver. The conditions that are referred to in paragraphs numbered 1 and 2 of the waiver are simply the conditions that were to be satisfied by the CRA as part of the settlement of the reassessment of the Appellant. The T7W-C forms for the Appellant for 2001 and 2002 confirmed that the adjustments that were to be made under paragraphs numbered 1 and 2 of the waiver were made by the CRA. These conditions related to the additional expenses that were allowed for 2001 and the transfer of business income and expenses for 2002 to the corporate tax return.

[9] The Appellant also argued that he signed the waiver under duress; however there was no evidence of any duress or undue influence on the Appellant other than the pressure that was put on the Appellant by his own accountant who had assured the Appellant that he would look after the other capital cost allowance amount. The only indication of any pressure from the CRA was that the auditor wanted to close the file. This pressure from the accountant for the Appellant cannot annul the waiver signed by the Appellant.

[10] As a result I find that the Appellant is bound by the waiver that he had signed and that pursuant to subsection 169(2.2) of the *Income Tax Act*, he did not have any right to appeal the reassessment of his 2001 taxation year in relation to business expenses, including the additional claim for capital cost allowance. As noted by Justice Sheridan in *Pearce v. The Queen*, 2005 TCC 38, 2005 DTC 199, [2005] 1 C.T.C. 2906, since subsection 169(2.2) deprives the Appellant of any right to appeal to the Tax Court of Canada, the appropriate remedy is to quash the appeal and therefore the appeal is quashed, with costs.

Signed at Halifax, Nova Scotia, this 17th day of October 2007.

“Wyman W. Webb”

CITATION: 2007TCC606
COURT FILE NO.: 2007-2690(IT)G
STYLE OF CAUSE: DAVID ANTHONY AND THE QUEEN
PLACE OF HEARING: Toronto, Ontario
DATE OF HEARING: October 10, 2007
REASONS FOR JUDGEMENT BY: The Honourable Justice Wyman W. Webb
DATE OF JUDGMENT: October 17, 2007

APPEARANCES:

For the Appellant: The Appellant himself
Counsel for the Respondent: Lesley L'Heureux

COUNSEL OF RECORD:

For the Appellant:

Name:
Firm:

For the Respondent: John H. Sims, Q.C.
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