

Docket: 2006-2246(IT)G

BETWEEN:

ERIC R. LANGILLE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on May 5, 2009, at Halifax, Nova Scotia.

Before: The Honourable Justice Patrick Boyle

Appearances:

Counsel for the appellant: Bruce S. Russell, Q.C.
 Bronwyn Duffy (student-at-law)
 Karen Stilwell (student-at-law)

Counsel for the respondent: Sandra L. Doucette

JUDGMENT

UPON having signed reasons for judgment herein on August 7, 2009;

AND UPON having read submissions on costs from both parties and in accordance with the further reasons herein;

The appeal from the reassessments made under the *Income Tax Act* with respect to the appellant's 1999, 2000 and 2001 taxation years is allowed in part, and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the reasons dated August 7, 2009.

The taxpayer is awarded costs payable by the respondent in an amount equal to 80% of the taxpayer's actual costs incurred for his counsel and disbursements that relate to the period only from April 30, 2009 through to the end of the trial.

The taxpayer is also awarded costs fixed in the amount of \$525 in respect of the costs submissions.

Signed at Ottawa, Canada, this 23rd day of October 2009.

"Patrick Boyle"

Boyle J.

Citation: 2009 TCC 540
Date: 20091023
Docket: 2006-2246(IT)G

BETWEEN:

ERIC R. LANGILLE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT ON COSTS

Boyle J.

[1] This matter was heard in Halifax in May and written reasons for judgment were released in August 2009. At the close of hearing of the appeal, I was asked to allow the parties an opportunity to make written submissions on costs following release of my reasons.

[2] The appeal involved two distinct issues, the dairy farm winding up issue and the insurance brokerage reorganization issue. Success was divided. The taxpayer was successful on the dairy farm winding up issue but his appeal was dismissed as it related to the insurance brokerage reorganization issue.

[3] Both sides have now filed written submissions on costs and each is asking that costs be awarded in its favour.

[4] The factors the Court may consider in exercising its discretionary power to determine costs are set out in subsection (3) of Rule 147 of the *Tax Court of Canada Rules (General Procedure)*. Subsections (4) and (5) of Rule 147 are also relevant. These rules provide:

147(3) In exercising its discretionary power pursuant to subsection (1) the Court may consider,
(a) the result of the proceeding,

- (b) the amounts in issue,
- (c) the importance of the issues,
- (d) any offer of settlement made in writing,
- (e) the volume of work,
- (f) the complexity of the issues,
- (g) the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding,
- (h) the denial or the neglect or refusal of any party to admit anything that should have been admitted,
- (i) whether any stage in the proceedings was,
 - (i) improper, vexatious, or unnecessary, or
 - (ii) taken through negligence, mistake or excessive caution,
- (j) any other matter relevant to the question of costs.

(4) The Court may fix all or part of the costs with or without reference to Schedule II, Tariff B and, further, it may award a lump sum in lieu of or in addition to any taxed costs.

- (5) Notwithstanding any other provision in these rules, the Court has the discretionary power,
- (a) to award or refuse costs in respect of a particular issue or part of a proceeding,
 - (b) to award a percentage of taxed costs or award taxed costs up to and for a particular stage of a proceeding, or
 - (c) to award all or part of the costs on a solicitor and client basis.

[5] The taxpayer was successful on the dairy farm winding up issue. The Crown was successful on the insurance brokerage reorganization issue. In terms of the amount of tax involved in the years before the Court, it appears that the amount relating to the insurance brokerage reorganization issue was somewhat greater than the amount relating to the dairy farm winding up issue. However, the insurance brokerage reorganization issue was only relevant to the year 2001 whereas the dairy farm winding up issue continues to be relevant to Mr. Langille for years subsequent to the years 1999 to 2001 which were before the Court, and continues to be relevant to his tax liability through 2009.

[6] It appears that the volume of work and complexity of the issues were average for such matters.

[7] As part of the trial preparation, the respondent served a Notice to Admit. Of the 28 statements of fact, the taxpayer admitted four. The taxpayer provided additional information with respect to 14 of the 24 denied statements. The respondent complains that the denials were a “blanketed response” that made the appeal less efficient and more burdensome on it. The taxpayer denies that he adopted a blanketed

response and insists that each request was individually considered and responded to accordingly. I do not know anything further regarding the request to admit and the respondent has not submitted that it was able to prove at trial the correctness of any of the requested admissions which had been denied.

[8] The taxpayer made an offer to settle this matter on April 28, 2009. That offer proposed that the taxpayer's dairy farm winding up issue be allowed and that the taxpayer concede the insurance brokerage reorganization issue. As it turned out, the taxpayer's settlement offer mirrored my decision on how the matters are to be dealt with.

[9] The taxpayer's settlement offer was rejected by the respondent on April 30. The respondent's rejection letter does not set out any reasons for not accepting the offer beyond restating its position on the facts and law concerning the dairy farm winding up issue. For example, the respondent does not say that it needs the complete facts to come out under oath and be tested in cross-examination, etc., nor that there are any facts that remain uncertain. The Crown had already examined the taxpayer for discovery under oath and the taxpayer was the only witness who testified to the facts of his dairy farming operation. Similarly, there has been no suggestion that the Canada Revenue Agency (the "CRA") was concerned that a significant legal principle was involved that would affect other taxpayers' appeals or the CRA's administrative practices.

[10] As I noted in *Jolly Farmer Products Inc. v. The Queen*, 2008 TCC 693, 2009 DTC 1040, the Rules of this Court on costs do not specify, as those of several jurisdictions do, that if an unsuccessful party has not accepted a settlement offer at least as favourable as the outcome of the trial, that party is responsible for substantial indemnity or solicitor-client costs from the date of the offer through to the end of the trial. In *Jolly Farmer* I awarded an amount in excess of the Tariff amount on account of such a settlement offer. I restate my comments therein that parties should take seriously their obligations to consider settlement offers carefully or run the risk of increased costs if they are not more successful at trial.

[11] Rule 147 specifically refers to settlement offers as a matter to be considered in deciding costs awards. Logically, in most cases, this could only have been intended to justify an increase in the amount of costs awarded beyond the Tariff.

[12] I do not believe that the absence of an express rule permitting substantial indemnity costs awards where an at least as favourable settlement offer is rejected leaves this Court unable, as a matter of law or jurisdiction, to choose to exercise its

discretion with respect to costs by making such an award in appropriate circumstances.

[13] Having regard to all of the above, I am awarding costs in favour of the taxpayer payable by the respondent in an amount equal to 80% of the taxpayer's actual costs incurred for his counsel and disbursements that relate to the period only from April 30, 2009 through to the end of the trial.

[14] The taxpayer is also awarded costs fixed in the amount of \$525 in respect of the costs submissions.

Signed at Ottawa, Canada, this 23rd day of October 2009.

"Patrick Boyle"

Boyle J.

CITATION: 2009 TCC 540

COURT FILE NO.: 2006-2246(IT)G

STYLE OF CAUSE: ERIC R. LANGILLE v. HER MAJESTY
THE QUEEN

PLACE OF HEARING: Halifax, Nova Scotia

DATE OF HEARING: May 5, 2009

REASONS FOR JUDGMENT BY: The Honourable Justice Patrick Boyle

DATE OF REASONS
FOR JUDGMENT: August 7, 2009

DATE OF JUDGMENT: October 23, 2009

DATE OF REASONS
FOR JUDGMENT ON COSTS: October 23, 2009

APPEARANCES:

 Counsel for the appellant: Bruce S. Russell, Q.C.
 Bronwyn Duffy (student-at-law)
 Karen Stilwell (student-at-law)

 Counsel for the respondent: Sandra L. Doucette

COUNSEL OF RECORD:

 For the appellant:

 Name: Bruce S. Russell, Q.C.

 Firm: McInnes Cooper
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