

Citation: 2011TCC447  
Date: 20110922  
Docket: 2008-328(IT)G

BETWEEN:

BILL CHOW,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

**REASONS FOR JUDGMENT WITH REGARDS TO COSTS**

(Delivered orally from the bench on April 13, 2011, in Toronto, Ontario.)

V.A. Miller J.

[1] I'll tell you my decision and then I'll tell you why I am making the decision. My decision is that in this case I don't think any costs should be awarded. I think each party can bear its own costs, and my decision is based on the following: When I look at Rule 147, in exercising my discretion, I may consider, and I did consider, the result of the proceedings. The result of the proceedings is that the Appellant was successful in having the unreported income decreased. The Crown was substantially successful, but there was some success for the Appellant.

[2] The next part that was relevant to me was the offers of settlement. When I looked at the offers of settlement, I do agree with the Appellant's counsel that in the first letter for settlement, the amounts that the Crown was willing to concede, was the \$15,000 in the year 2001. I'm assuming that was the \$15,000 loan. I saw documentary evidence to support that, and I agree with the Appellant's counsel that if you see documentary evidence in a net worth situation, it should be allowed. It shouldn't even be questioned. That's my opinion and that's what I've done in this file.

[3] According to Respondent's counsel, the \$6,000 which the Crown was willing to settle or concede on for the year 2004 was mostly the credit card amount. The exact figure has documentary evidence to support it, so the last settlement offer of April 7<sup>th</sup>, was the same for the \$15,000 in 2001 and now we have the \$31,000. That's

the \$25,000 extra for 2004 that was conceded here in court, and that I would have allowed anyway. Just looking at the net worth schedules, I could see that it was duplicated.

[4] Normally, I would use settlement offers to award costs to the person who made the settlement offer, and especially if the other party didn't even participate in the settlement process, but in this case, those amounts that were offered for settlement should have been just let go. They were amounts that were supported by the documentary evidence. The amounts that I have allowed, were contained in the letter of settlement dated February 25<sup>th</sup>, 2011 from Appellant's counsel. The loan payable figure was exactly what I have allowed. The credit card amount that was asked for was exactly what I have allowed. The home wasn't allowed, but it wasn't argued in front of me with respect to that particular amount, so I really don't give any weight to it. Again, the amounts that were allowed were supported by the documents presented by the Appellant.

[5] The Crown argued that there were issues that lengthened the proceeding. In my respectful opinion I didn't see anything that lengthened it on behalf of the Appellant. The Respondent lengthened the proceeding as it did not accept the documentary evidence given by the Appellant.

[6] I did a very rough calculation when deciding about penalties, and I saw that there was still an amount that was unreported. As a result of my decision, there is a small amount of unreported income in 2001; there is still a substantial amount of unreported income in 2002 and 2003; there is now no unreported income in 2004. So when I have looked at all of that, I found, and it had been my opinion before I came in that there be no costs. But I know that I had to consider the settlement offers because that might have changed my opinion.

[7] It hasn't changed my opinion, so there will be no costs awarded in this matter.

Put in paragraph format and edited slightly for clarity  
Signed at Ottawa, Canada, this 22<sup>nd</sup> day of September 2011.

“V.A. Miller”

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V.A. Miller J.

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COURT FILE NO.: 2008-328(IT)G

STYLE OF CAUSE: BILL CHOW AND  
THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: April 11 – 12 - 13, 2011

REASONS FOR JUDGMENT BY: The Honourable Justice Valerie Miller

DATE OF JUDGMENT: May 9, 2011

DATE OF REASONS FOR  
JUDGMENT: September 22, 2011

APPEARANCES:

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