

Date: 20070629

Docket: A-203-07

Citation: 2007 FCA 250

Present: NOËL J.A.

BETWEEN:

LIONS VILLAGE OF GREATER EDMONTON SOCIETY

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on June 29, 2007.

REASONS FOR ORDER BY:

NOËL J.A.

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REASONS FOR ORDER

NOËL J.A.

[1] This is an application by the appellant pursuant to Rule 343 of the *Federal Courts Rules* to settle the contents of the Appeal Book. At issue is whether a Notice of Expert Witness filed in pre-trial proceedings before the Tax Court pursuant to Rule 7(1) of the *GST (IP) Rules of the Tax Court* and an appraisal report which was attached to this Notice should form part of the Appeal Book.

[2] The Notice in question which was signed by Counsel for the respondent reads:

I attach a Report in writing signed by Rick Sliwkanich, who I propose to qualify as an expert witness in this appeal.

I am satisfied that this Report represents evidence that Rick Sliwkanich is prepared to give in this matter.

[3] Despite giving this Notice, Counsel made the decision at trial not to call Mr. Sliwkanich as a witness with the result that the report that he prepared was not tendered as evidence. Counsel for the appellant nevertheless asks that the Notice of Expert Witness and the report be made part of the Appeal Book. Counsel for the respondent objects.

[4] The accepted rule is that the Appeal Book is restricted to documents which were put in evidence before the Trial Judge. Evidence which was not before the Trial Judge may only be introduced in special circumstances pursuant to an order under Rule 351.

[5] Counsel for the appellant concedes that the document in question was not tendered as evidence before the Tax Court Judge. He also states that its inclusion in the Appeal Book is not being sought to introduce new evidence in this appeal. It is the existence of the document which Counsel seeks to establish rather than its contents (Appellant's written submissions, para. 5).

[6] If that is the purpose, I do not see why the document needs to be included in the Appeal Book. The fact of the existence of the Notice and the report is not contested and Counsel is free to make whatever argument he wishes to make in support of his appeal on the basis that both were filed in pre-trial proceedings.

[7] Alternatively, Counsel for the appellant submits that the report is relevant to the appeal even though it was not filed as evidence. According to Counsel, it is reasonable to assume that the Tax Court Judge reviewed the report since it was part of the pre-trial record. The inference which Counsel wishes me to draw is that the report, even though it was not filed as evidence, had an impact on the decision of the Tax Court Judge (Appellant's written representations in reply, para. 7).

[8] One can speculate about whether the Tax Court Judge read the report before the trial but if he did, he would have been duty bound to disregard it altogether upon noting Counsel's decision not to tender it as evidence. Nothing in the decision under appeal or in the record presented in support of this application suggests that the Tax Court Judge lost sight of this basic rule or took into account matters which were not in evidence before him.

[9] The motion to add the Notice and the report to the Appeal Book will therefore be dismissed, and an order will issue limiting the contents of the Appeal Book to the documents set out in paragraph 5 of the respondent's written representations.

“Marc Noël”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-203-07

STYLE OF CAUSE: LIONS VILLAGE OF GREATER
EDMONTON SOCIETY and HER
MAJESTY THE QUEEN

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: NOËL J.A.

DATED: June 29, 2007

WRITTEN REPRESENTATIONS BY:

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FOR THE RESPONDENT

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