Date: 20080708

Docket: A-553-05

Citation: 2008 FCA 232

BETWEEN:

PRASAD V. ADUVALA

Appellant

and

HER MAJESTY THE QUEEN

Respondent

ASSESSMENT OF COSTS - REASONS

Charles E. Stinson
Assessment Officer

[1] The Court dismissed with costs this appeal of a decision of the Tax Court of Canada concerning the statutory time limit for filing a notice of appeal in the latter Court. I issued a timetable for written disposition of the assessment of the Respondent's bill of costs.

[2] The claims for counsel fees at or towards the minimum value in each range, other than item 26 (assessment of costs) at mid-range, are in order and are allowed as presented. The Appellant objected to the claim ($518.46) for a process server on the basis that it was excessive and would result in undue hardship and discrimination because of his address for service. The Appellant argued that ordinary mail would have been a cheaper alternative for service of documents (the notice of

appearance and the memorandum of fact and law), that the photocopying claim ($470.01) is excessive and relates to non-essential documents, i.e. the memorandum of fact and law not referred to during the hearing, and that these disbursements were overhead and unnecessary given the absence of complexity and of likelihood of success on the part of the Appellant.

[3] My view, often expressed further to my approach in *Carlile v. Canada (M.N.R.)* (1997), 97 D.T.C. 5284 (T.O.) and the sentiment of Lord Justice Russell in *Re Eastwood (deceased)* (1974), 3 All. E.R. 603 at 608, that assessment of costs is "rough justice, in the sense of being compounded of much sensible approximation," is that discretion may be applied to sort out a reasonable result for costs equitable for both sides. I think that my view is reinforced by the editorial comments (see: The Honourable James J. Carthy, W.A. Derry Millar & Jeffrey G. Gowan, *Ontario Annual Practice 2005-2006* (Aurora, Ont: Canada Law Book, 2005)) for Rules 57 and 58 to the effect that an assessment of costs is more of an art form than an application of rules and principles as a function of the general weight and feel of the file and issues, and of the judgment and experience of the assessment officer faced with the difficult task of balancing the effect of what could be several subjective and objective factors. I find the claim of $470.01 for photocopies reasonable in the circumstances and allow it as presented.

[4] The Appellant is a self-represented litigant living in Carrying Place, Ontario, about 175 kilometres (km) east of downtown Toronto (the Respondent's address for service). On occasion, there have been problems associated with service on self-represented litigants, but there is no general practice precluding the use of ordinary mail for service if permissible under the Rules and

if appropriate in the circumstances. The process server claim flowed from two invoices from Avanti Paralegal Services located in Caledon, Ontario, which is about 70 km northwest of downtown Toronto. The breakdown of the first invoice ($228.28) was: to arrange service of the notice of appearance ($25.00), prepare affidavit of service ($5.00), file documents and return stamped copies ($20.00), mileage (297 km @ $0.55 per km = $163.35) and GST ($14.93). The breakdown of the second invoice ($290.18) was: to collect the memorandum of fact and law from downtown Toronto and leave it at the Appellant's address for service ($65.00), prepare affidavit of service, file it with the memorandum of fact and law and return stamped copies ($25.00), mileage (324 km @ $0.55 per km = $178.20), parking ($3.00) and GST ($18.98).

[5] As the notice of appearance and the memorandum of fact and law are non-originating documents, Rule 140(1) (non-personal service including ordinary mail and courier) applies. Rule 141 provides that the effective date of service of a document by ordinary mail is the tenth day after it was mailed and by courier is the date on the receipt. Rule 341(1) provides that a notice of appearance be served and filed within ten days after service of the notice of appeal. I cannot think of many situations in which a potential respondent could assimilate the implications of a notice of appeal, give instructions to counsel and then meet the Rule 341(1) deadline by ordinary mail. *Desormeaux v. Ottawa-Carleton Regional Transit Commission*, [2005] F.C.J. No. 530 (F.C.A.) referred to Rule 145 in concluding that a party's entitlement to be served with documents is the only consequence of not filing a notice of appearance in time. The party may still participate in the appeal. The Crown's conduct would be significantly hampered if not entitled to be served. Financial regulations in the public sector impose strict guidelines for the selection and use of third

party vendors such as process servers. The mileage claim in the first invoice is less than the combined distances roundtrip between the offices of the process server and counsel for the Respondent and the Appellant's address for service. The first invoice does not contain excessive charges. I allow it as presented at $228.28.

[6] Rule 346(2) provides for service of a respondent's memorandum of fact and law within 30 days of service of an appellant's memorandum of fact and law. I have read both. I doubt that the Appellant's document posed difficulties for the preparation of the Respondent's document. Service by ordinary mail or by courier was a viable option. I allow the second invoice at a reduced amount of $100.00.

[7] The Respondent's bill of costs, presented at $2,668.47, is assessed and allowed at $2,478.29.

"Charles E. Stinson"
Assessment Officer

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-553-05

STYLE OF CAUSE: PRASAD V. ADUVALA v. HMQ

ASSESSMENT OF COSTS IN WRITING WITHOUT PERSONAL APPEARANCE OF THE PARTIES

REASONS FOR ASSESSMENT OF COSTS: CHARLES E. STINSON

DATED: July 8, 2008

WRITTEN REPRESENTATIONS:

Prasad V. Aduvala	FOR THE APPELLANT (self-represented)
Nimanthika Kaneira	FOR THE RESPONDENT

SOLICITORS OF RECORD:

n/a	FOR THE APPLELLANT
John H. Sims, Q.C. Deputy Attorney General of Canada Toronto, ON	FOR THE RESPONDENT