Citation: 2017 TCC 19
Date: 20170127
Docket: 2015-450(IT)G

BETWEEN:

FIDUCIE FINANCIÈRE LAPIERRE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

AND

Docket: 2015-435(IT)I

BETWEEN:

GLENDA WAGNER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

AND

Docket: 2015-453(IT)I

BETWEEN:

RENAUD LAPIERRE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR ORDER OF JANUARY 6, 2017

Lamarre A.C.J.

[1] Upon a joint application made by the parties to the Court on June 9, 2016, a one-day hearing of the appeal in 2015-450(IT)G (Fiducie financière Lapierre) was set for January 25, 2017, by order of the Court dated June 22, 2016. Notices of Hearing dated June 23, 2016, also scheduled the appeals of Renaud Lapierre and Glenda Wagner for hearing on January 25, 2017. The three appellants were represented by the same counsel.

[2] On November 25, 2016, the appellant Fiducie financière Lapierre, through its then counsel, Robert Marcotte, advised the Court that the appeal hearing would proceed as planned. Counsel for the respondent also confirmed to the Court in a letter dated November 25, 2016, that the hearing would proceed as planned.

[3] On January 4, 2017, the appellants changed counsel, and a Notice of Change in Representation was filed with the Court.

[4] On January 5, 2017, the appellants' new counsel, Bernard Roy, wrote to the Court seeking to have the hearing of the appeals postponed on the grounds that he would be out of town on January 25, 2017, and that he had sought from the respondent the audit and objection files. The respondent did not challenge the request for postponement.

[5] In an order dated January 6, 2017, I granted the application for an adjournment, and, given the lateness of the appellants' postponement request, I awarded costs in the amount of $500 payable to the respondent upon receipt of the order.

[6] In a letter dated January 12, 2017, counsel for the appellants asked the Court rectify the order by removing the obligation for the appellants to pay costs in the amount of $500 to the respondent, on the grounds that the latter had not sought costs and the parties had not had an opportunity to make submissions on that issue. The appellants argue that the part of the order concerning costs is *ultra petita*.

[7] The respondent saw no need to make submissions or comments and has left this matter up to the Court's discretion.

[8] For the reasons below, I uphold the order of January 6, 2017, as to costs, and the appellants are required to pay them forthwith.

[9] First of all, I note that the general procedure appeal is a Class C proceeding, which means that it is an appeal in which the aggregate of all amounts in issue is

$150,000 or more (see Tariff A of Schedule II to the *Tax Court of Canada Rules (General Procedure)* (**Rules**).

[10] Costs of $500 therefore represent a minimal amount relative to the amounts in issue. Even if all the parties consent to the adjournment, the Court has the inherent power to prevent and control abuses of its process, and the awarding of costs is one mechanism for preventing or remedying "abusive delays or procedures" (*Fournier v. The Queen* 2005 FCA 131, paragraphs 10-12).

[11] This power to control its process and the right to oversee the way in which counsel carry out their work is inherent in all statutory courts, as per the doctrine of jurisdiction by necessary implication.

[12] The Supreme Court of Canada refers to it in *R. v. Cunningham*, [2010] 1 S.C.R. 331, at paragraph 19:

> [19] Likewise in the case of statutory courts, the authority to control the court's process and oversee the conduct of counsel is necessarily implied in the grant of power to function as a court of law. This Court has affirmed that courts can apply a "doctrine of jurisdiction by necessary implication" when determining the powers of a statutory tribunal:
>
> > . . . the powers conferred by an enabling statute are construed to include not only those expressly granted but also, by implication, all powers which are practically necessary for the accomplishment of the object intended to be secured by the statutory regime . . . .
> >
> > (*ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board*), 2006 SCC 4, [2006] 1 S.C.R. 140, at para. 51)
>
> Although Bastarache J. was referring to an administrative tribunal, the same rule of jurisdiction, by necessary implication, would apply to statutory courts.

[13] The Tax Court of Canada (**TCC**) is a superior court of record (section 3 of the *Tax Court of Canada Act*), which has, according to its rules, a discretionary power to award the costs and expenses it considers appropriate in the circumstances of each appeal. Subsection 147(1) of the Rules reads as follows:

> 147 (1) The Court may determine the amount of the costs of all parties involved in any proceeding, the allocation of those costs and the persons required to pay them.

[14] The Federal Court of Appeal (**FCA**) recognized the discretionary power of the TCC in an award of costs under section 147 of the Rules in *The Queen v. Lau*, 2004 FCA 10, at paragraphs 3 and 5:

> [3] An award of costs is governed by rule 147 of the Court's General Procedure Rules. That rule vests the Tax Court would "full discretionary power" over payment of costs. Criteria for the exercise at that discretion are set forth in subsection 147 (3). Subsection (4) confers an additional power which includes the awarding of costs by way of lump sum. . . .
>
> [5] It can be seen that the awarding of costs under rule 147 is highly discretionary although, of course, that discretion must be exercised on a principled basis. We are all of the view that it was so exercised by the Tax Court and that no basis has been shown for interfering with the judgment below.
>
> [Emphasis added.]

[15] This principle was reaffirmed by this Court in *Spruce Credit Union v. The Queen*, 2014 TCC 42, at paragraph 18:

> [18] In its later decision in *Landry v. The Queen*, 2010 FCA 135, the Court commented on its earlier comments in *Lau* and emphasized again that the Tax Court of Canada's highly discretionary power to fix costs "must be exercised on a principled basis" (at paragraph 22). In my view, the changed wording of Rule 147(1) since the *Lau* and *Landry* decisions does not in any way affect the nature, breadth, or scope of this Court's power to fix costs provided always it is exercised on a principled basis.
>
> [Emphasis added.]

[16] Under the general procedure, in accordance with paragraph 147(3)(*g*) of the Rules, the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding is one of the factors that the TCC may consider in awarding costs.

[17] Further, under the informal procedure, the Court may allocate costs to the respondent if the actions of the appellant unduly delayed the prompt and effective resolution of the appeal, and it may direct the payment of costs in a fixed sum (section 10 of the *Tax Court of Canada Rules (Informal Procedure)*).

[18] In this case, the appeals were called for a one-day hearing on January 25, 2017. The Court sent the Notices of Hearing for the three proceedings on June 22

and 23, 2016. The appellants waited until January 4, 2017, to inform the Court of a change in representation, more than six months after receiving the Notices of Hearing and only 20 days before the hearing date.

[19] By applying for an adjournment at such a late date, on the grounds that their new counsel was unavailable on the hearing date and that he had sought copies of the audit and objection files from the respondent, the appellants delayed the prompt and effective resolution of the appeals. In so acting, they wasted the Court's resources, as the time reserved for the hearing on January 25, 2017, could no longer be used. The TCC is an itinerant court, and adjournments often affect arrangements made long in advance for the hearing, sometimes with cost to the public purse. The Court has a strong interest in the timing of its hearings, and, in this sense, there is prejudice (see *UHA Research Society v. Attorney General of Canada*, 2014 FCA 134, at paragraphs 13-14).

[20] I find that this Court has the power, as part of the regulation of its processes, to award costs when a party's conduct has a negative impact on the course of the judicial process.

[21] Here, I echo the comments of the Federal Court of Appeal in *Adams v. Canada* (*Royal Canadian Mounted Police*), [1994] F.C.J. No. 1480 (QL), 174 N.R. 314, at paragraph 16:

> . . . The day has passed when courts could allow to litigants the luxury of being at their beck and call. Courts are public institutions for the resolution of disputes and cost substantial public money. Court congestion and delay is a serious public concern. Parties who launch proceedings at any level with the intention of putting them in a "holding pattern" for their own private purposes may be called to account for their waste and abuse of a public resource. They also risk having those proceedings dismissed.

[22] I find that the request for an adjournment was submitted late, with a detrimental effect on public resources.

[23] I therefore reiterate my decision to award costs in the amount of $500 to the respondent, payable by the appellants forthwith.

Signed at Ottawa, Canada, this 27th day of January 2017.

"Lucie Lamarre"

Lamarre A.C.J.

Translation certified true
on this 27th day of March 2017
Francie Gow, BCL, LLB

CITATION:	2017 TCC 19
COURT FILE NO.:	2015-450(IT)G, 2015-435(IT)I, 2015-453(IT)I
STYLES OF CAUSE:	FIDUCIE FINANCIÈRE LAPIERRE, GLENDA WAGNER and RENAUD LAPIERRE v. THE QUEEN
REASONS FOR ORDER BY:	The Honourable Associate Chief Justice Lucie Lamarre
DATE OF ORDER:	January 27, 2017

APPEARANCES:

Counsel for the appellant:	Bernard Roy
Counsel for the respondent:	Cristina Ham

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