

Docket: 2005-287(IT)G

BETWEEN:

RULAND REALTY LIMITED,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion heard on September 1, 2005 at Toronto, Ontario

Before: The Honourable Justice L.M. Little

Appearances:

Counsel for the Appellant: Adrienne K. Woodyard
and Jane Southren

Counsel for the Respondent: Elizabeth Chasson
and Perry Derksen

ORDER

Upon Motion made by the Appellant for Judgment pursuant to Rule 170.1(a) of the *Tax Court of Canada Rules (General Procedure)*;

And upon Motion made by the Respondent for an Order granting leave to amend the Reply to the Notice of Appeal;

And upon hearing what was alleged by the parties;

It is Ordered that the Respondent be granted leave to amend the Reply to the Notice of Appeal;

It is Ordered that lump sum costs in the amount of \$15,000.00 plus disbursements totalling \$207.00, payable forthwith, be awarded to the Appellant, in accordance with the attached Reasons for Order.

Signed at Vancouver, British Columbia, this 27th day of October 2005.

"L.M. Little"

Little J.

Citation: 2005TCC690
Date: 20051027
Docket:2005-287(IT)G

BETWEEN:

RULAND REALTY LIMITED,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Little J.

A. FACTS:

[1] A Notice of Appeal was filed by the Appellant on January 28, 2005 against Notices of Reassessment made on June 14, 2002 and August 16, 2002 for the 1989 taxation year.

[2] Counsel for the Appellant states in the Notice of Appeal as follows:

29. The issue to be decided in this appeal is whether the third 1989 Reassessment and the Fourth 1989 Reassessment are valid.

[3] The Minister of National Revenue (the "Minister") filed a Reply to Notice of Appeal on April 8, 2005.

[4] On May 5, 2005, counsel for the Appellant filed an Answer with the Court in which he commented in detail on many of the points contained in the Minister's Reply.

[5] On July 22, 2005, counsel for the Appellant filed a Notice of Motion. The Motion was for Judgment pursuant to Rule 170.1(a) of the *Tax Court of Canada Rules (General Procedure)* (the "*Rules*"), re admission in the pleadings that the Minister is not permitted to reassess an amount pursuant to subsection 165(3) of the *Income Tax Act* (the "*Act*").

[6] Counsel for the Appellant requested the costs of this Motion on a solicitor-client basis payable forthwith.

[7] By letter dated August 19, 2005, counsel for the Minister filed a Notice of Motion with the Court. The Notice of Motion is for an order granting leave to amend the Respondent's Reply.

[8] Counsel for the Appellant wrote a letter dated August 22, 2005 to Elizabeth Chasson, counsel for the Minister. The letter stated as follows:

1. The Appellant consents to the Respondent's Motion to amend the Reply.
2. The Appellant expects to be fully compensated in costs.
3. The Appellant will have to withdraw its own Motion.
4. The Appellant requests costs on a solicitor-client basis to compensate it fully for the time spent and the disbursements incurred in preparing and serving its Answer and serving the Notice of Motion.

[9] By letter dated August 25, 2005, counsel for the Appellant advised counsel for the Minister that a breakdown of the legal fees incurred by the Appellant in connection with this appeal were as follows:

Total Time and Disbursements	\$47,107.00
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B. ISSUE:

[10] Should the Appellant be awarded solicitor-client costs in the amount of \$47,107.00?

C. ANALYSIS:

[11] Section 147 of the *Rules* sets out the general principles applicable to the award of costs. The relevant portions of this section are:

147. (1) Subject to the provisions of the Act, the Court shall have full discretionary power over payment of the costs of all parties involved in any proceeding, the amount and allocation of those costs and determining the persons by whom they are to be paid.

...

(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 proceeding 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.

[12] In *Young v. Young*, [1993] 4 S.C.R. 3, the Supreme Court of Canada said that solicitor-client costs are generally awarded only where there has been reprehensible, scandalous or outrageous conduct on the part of one of the parties. The Supreme Court held that neither the fact that an application has little merit nor that part of the costs of the litigation have been paid by others are basis for the award of solicitor-client costs.

[13] In *Wewayakum Indian Band v. Canada* (1999), 247 N.R. 350, 171 F.T.R. 320 the Federal Court of Appeal held that the fact that a claim has little merit or was very weak is not a basis for awarding solicitor-client costs.

[14] In *Vacyshyn v. The Queen*, [1999] 1 C.T.C. 139, 99 DTC 5133, the Federal Court of Appeal said that an award of costs on a solicitor and client basis is exceptional and is generally made on the grounds of misconduct connected with the litigation.

[15] After considering the above Court decisions and a number of other decisions I have concluded that the rule with regard to an award of costs on a solicitor and client basis is that such an award is exceptional and generally ought to be made only on the ground of misconduct connected with the litigation.

[16] I have concluded that this is not a situation where it is appropriate to award solicitor and client costs.

[17] It will be noted that section 147 of the *Rules* gives the Court full discretionary power over payment of the costs of all parties. I have concluded that it is appropriate to award lump sum costs of \$15,000.00 plus the following disbursements to the Appellant, payable forthwith:

Court fees

Filing and service of Answer	\$61.00
Filing and service of Amended Answer	23.00
Photocopying	<u>123.00</u>
	<u>\$207.00</u>

Signed at Vancouver, British Columbia, this 27th day of October 2005.

"L.M. Little"

Little J.

CITATION: 2005TCC690
COURT FILE NO.: 2005-287(IT)G
STYLE OF CAUSE: Ruland Realty Limited and
Her Majesty the Queen
PLACE OF HEARING: Toronto, Ontario
DATE OF HEARING: September 1, 2005
REASONS FOR ORDER BY: The Honourable Justice L.M. Little
DATE OF ORDER: October 27, 2005

APPEARANCES:

Counsel for the Appellant: Adrienne K. Woodyard
and Jane Southren

Counsel for the Respondent: Elizabeth Chasson
and Perry Derksen

COUNSEL OF RECORD:

For the Appellant:

Names: Nathanson Q.C. David C.
Adrienne K. Woodyard

Firm: Lerner LLP (Toronto)

For the Respondent: John H. Sims, Q.C.
Deputy Attorney General of Canada
Ottawa, Canada