

Dockets: 2011-2972(EI)
2011-3652(CPP)

BETWEEN:

1443900 ONT. INC.

Appellant,

and

THE MINISTER OF NATIONAL REVENUE

Respondent.

Motion dealt with by written submissions

By: The Honourable Mr. Justice Randall Boccock

Participants:

Agent for the Appellant:

Zadek Ramowski

Counsel for the Respondent:

Caroline Ebata

ORDER

Following consideration of the Appellant's motion and the Respondent's responding materials both filed by written representations:

IT IS ORDERED THAT the motion is denied in accordance with the attached Reasons for Order.

Signed at Ottawa, Canada, this 5th day of February 2013.

“R.S. Boccock”

Boccock J.

Citation: 2013 TCC 45
Date: 20130205
Dockets: 2011-2972(EI)
2011-3652(CPP)

BETWEEN:

1443900 ONT. INC.

Appellant,

and

THE MINISTER OF NATIONAL REVENUE

Respondent.

REASONS FOR ORDER

Bocock J.

Background

[1] Judgment in these matters was rendered by Order dated March 6, 2012 by Justice Webb, as he then was, upon reading and in accordance with the Consent to Judgment dated March 2, 2012.

[2] The Consent to Judgment was duly executed by both parties through legal counsel.

[3] The Consent to Judgment provided that two workers were not engaged in insurable employment within the meaning of paragraph 5(1)(a) of the *Employment Insurance Act* for the period January 1, 2008 to December 31, 2009 (the “Consent to Judgment Period”).

Appellant’s Motion

[4] By Notice of Motion filed with the Court on December 17, 2012, the Appellant moves for an “Amended Consent to Judgment”.

[5] It appears that the issue of insurable earnings is relevant to income earned by at least one of the workers for the period from September 2006 to December 2007 and not solely for the Consent to Judgment Period. Although the Appellant has not pleaded any section of the *Tax Court of Canada Rules (General Procedure)* (“*Rules*”), nor any rule, it would seem the moving party seeks to rely upon subsection 172(1) of the *Rules* otherwise commonly known as the “slip rule”.

Respondent’s Submissions

[6] The Respondent opposes such motion on the basis that no inadvertent mistake or omission has been made by the Court. The error, if any, was made by counsel during the course of drafting and executing the Consent to Judgment.

[7] The Court notes that the Respondent in her Reply to the Notice of Appeal stated at paragraph 7(u):

Paragraph 7 [...] u) the Worker received a salary from September 2006 to December 2007 and reported his income on line 101 (T4 Earnings) for 2008 and 2009;

[8] The moving party, in its materials, has characterized this assumption of the Respondent as a statement of fact and thereby submitted that such assumption has the legal equivalency of a term within the Consent to Judgment.

[9] The Court notes that no trial judge has ever made a finding of fact in this matter regarding any assumptions whether contained in the Respondent’s Reply or the Appellant’s Notice of Appeal. This matter was resolved and settled as between the parties solely on the basis of the Consent to Judgment submitted to the Court.

[10] Through counsel, the parties *inter se* determined the relevant facts and terms of settlement, reviewed and executed same and then submitted same to the Court in order to obtain judgment. If the issued judgment did not reflect the Consent to Judgment, then the Court by virtue of subsection 172(1) of the *Rules* would have limited remedial jurisdiction to correct any “slip” of the Court.

[11] There is no evidence that the Court committed any “slips” whatsoever. In fact, the mistake was committed entirely by counsel prior to execution and submission of the Consent to Judgment to the Court.

[12] At law, there being no slip by the Court, subsection 172(1) cannot apply and the Court is *functus officio*: having done its task strictly and completely in accordance

with the jointly, executed and submitted instructions of legal counsel in the form of the Consent to Judgment.

[13] Therefore, for the reasons stated, the motion is denied.

Signed at Ottawa, Canada, this 5th day of February 2013.

“R.S. Boccock”

Boccock J.

CITATION: 2013 TCC 45

COURT FILE NOS.: 2011-2972(EI)
2011-3652(CPP)

STYLE OF CAUSE: 1443900 ONT. INC. AND THE MINISTER
OF NATIONAL REVENUE

REASONS FOR ORDER BY: The Honourable Mr. Justice Randall Boccock

DATE OF ORDER: February 5, 2013

PARTICIPANTS:

Agent for the Appellant: Zadek Ramowski
Counsel for the Respondent: Caroline Ebata

COUNSEL OF RECORD:

For the Appellant:

Name: N/A
Firm:

For the Respondent: William F. Pentney
Deputy Attorney General of Canada
Ottawa, Canada