

Date: 20071128

Docket: T-601-01

Citation: 2007 FC 1253

BETWEEN:

**In re the *Excise Tax Act*
and
In re one or more assessments made
by the Deputy Minister of Revenue of Quebec
pursuant to the *Excise Tax Act***

Applicant

and

**ALAIN DÉZIEL,
FIDUCIE AVILLA, REPRESENTED BY THE
TRUSTEES ALAIN DÉZIEL AND CHANTAL GARCEAU,
PUBLICATION OF RIGHTS OFFICER OF
CHAMPLAIN REGISTRATION DIVISION
AND PUBLICATION OF RIGHTS OFFICER OF
TROIS-RIVIÈRES REGISTRATION DIVISION**

Respondent

ASSESSMENT OF COSTS - REASONS

DIANE PERRIER, ASSESSMENT OFFICER

[1] This case concerns a Paulian action allowed with costs (Tariff B, Column III) by Gauthier J.
on December 11, 2006.

[2] On January 16, 2007 counsel for the applicant filed his bill of costs and asked that it be assessed without a personal appearance. On April 10, 2007 we sent letters to the parties setting a schedule for filing their written submissions. We have received the written submissions of each party and I am now prepared to assess the costs with the documentation in the record.

[3] The only comment by the respondent on the applicant's bill of costs is that the bill of costs should not be assessed as the applicant has not obtained a final judgment in the case at bar. As the respondents submitted an appeal to the Court of Appeal, it would be premature to assess the bill of costs since their case has not been concluded. I cannot accept this interpretation, since the Court rendered a final judgment in the Federal Court in this matter in connection with the Paulian action. The applicant may ask that the bill of costs be assessed even though the matter has been appealed to the Federal Court of Appeal. The function of the assessment officer is to quantify costs: when a court judgment indicates that the action has been allowed with costs, and that is the case here, the assessment officer must proceed to assess the bill of costs.

[4] Accordingly, assessable services are awarded in the amount of \$15,347.70 (\$13,468.80 + \$808.13 – GST + \$1,070.77 – QST). I have allowed counsel's fees as requested for the following items:

1. Preparation and filing of originating document (7 units);
5. Motion to cease occupying (4 units);
7. Discovery of documents (5 units);
8. Preparation of examination of Chantal Garceau and Alain Déziel (5 units);
10. Preparation for conferences, including memorandum (6 units);

12. Notice to admit facts (3 units);
- 13(a). Counsel's fees: preparation for trial or hearing (5 units);
15. Preparation and filing of written pleading at Court's request on June 12, 2006 (7 units);
27. Preparation and drafting of reply, ordered by Court on June 12, 2006 (3 units).

[5] On the other hand, I have altered the following assessable services: item 11 – attendance at conference on May 4, 2005: I have allowed 1 hour (0.20 h x 3 units) and for item 11 – attendance at Court on June 6, 2006, 1 hour 11 minutes (0.24 h x 3 units), to take into account the length of hearings. Item 12 – schedule filed on February 18, 2003 was not allowed since there is no item in Tariff B which allows it. Item 13(b) – Counsel's fees: preparation of hearing for 2nd and 3rd days in Court allowed. Under item 13(b) of Tariff B, the first day in Court must be excluded, namely June 12, 2006. The second day, June 13, 2006, is considered a full day as according to the hearing transcript the trial lasted from 9:28 am to 12:15 pm and from 2 pm to 5:45 pm. However, on June 14, 2006 the trial only lasted for 1 hour, from 10:50 am to 11:43 am, and on June 15, 2006 the trial lasted from 9:30 am to 1:40 pm, or 4 hours: I have therefore allowed a second day for attendance in court. Item 14(a) – attendance of first counsel at Court, is allowed according to the hearing transcript of June 12, 2006: (6.5 hours x 3 units) June 12, 2006, (6.5 hours x 3 units) June 13, 2006, (1 hour x 3 units) June 14, 2006 and (4 hours x 3 units) June 15, 2006. For item 26, assessment of bill of costs, I have awarded 4 units since this was an assessment in writing.

[6] The disbursements submitted in the amount of \$1,598.76 are awarded in the amount of \$1,023.18. I have not allowed disbursements 5 and 8 for the transcription of testimony at the trial held on June 12 and 13, 2006 as those disbursements were not necessary in proceeding with the case

in the Federal Court. The other disbursements are awarded since they seem to be reasonable and are proven by the affidavit of Ghislaine Thériault.

[7] The applicant's bill of costs submitted in the amount of \$22,930.20 will be assessed and allowed in the amount of \$16,370.88. A certificate of assessment will be issued in the matter.

“Diane Perrier”

DIANE PERRIER
ASSESSMENT OFFICER

Québec, Quebec
November 28, 2007

Certified true translation

Brian McCordick, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-601-01

STYLE OF CAUSE: In re the *Excise Tax Act* and in re one or more assessments made by the Deputy Minister of Revenue of Quebec pursuant to the *Excise Tax Act*

Applicant

and

ALAIN DÉZIEL, FIDUCIE AVILLA, REPRESENTED BY THE TRUSTEES ALAIN DÉZIEL AND CHANTAL GARCEAU, PUBLICATION OF RIGHTS OFFICER OF CHAMPLAIN REGISTRATION DIVISION AND PUBLICATION OF RIGHTS OFFICER OF TROIS-RIVIÈRES REGISTRATION DIVISION

Respondent

ASSESSMENT OF COSTS WITHOUT PERSONAL APPEARANCE

REASONS OF DIANE PERRIER, ASSESSMENT OFFICIER

DATED: November 28, 2007

WRITTEN SUBMISSIONS BY:

Ghislaine Thériault

FOR THE APPLICANT

Alain Déziel

FOR HIMSELF

SOLICITORS OF RECORD:

Veillette, Larivière et associés
Department of Justice
Québec, Quebec

FOR THE APPLICANT

Jean Dury
Montréal, Quebec

FOR FIDUCIE AVILLA