

Federal Court



Cour fédérale

Date: 20110513

Docket: T-631-09

Citation: 2011 FC 553

BETWEEN:

**IN THE MATTER OF THE
*INCOME TAX ACT,***

**AND IN THE MATTER OF ASSESSMENTS
AND REASSESSMENTS BY THE
MINISTER OF NATIONAL REVENUE
UNDER THE *INCOME TAX ACT,***

AGAINST

**FIDUCIE DAUPHIN AND
9125-9622 QUÉBEC INC.**

[ENGLISH TRANSLATION]

REASONS FOR ASSESSMENT OF COSTS

ASSESSMENT OFFICER JOHANNE PARENT

[1] On November 15, 2010, the Court dismissed a motion from Fiducie Dauphin and 9125-9622 Québec Inc. to vacate the jeopardy collection order of April 22, 2009, and granted a motion from the Crown to confirm the effective service of the jeopardy collection order of April 22, 2009, and notices of assessment issued on April 21, 2009, with costs against Fiducie Dauphin and 9125-9622 Québec Inc. jointly and severally. On February 17, 2011, the Crown submitted its bill of

costs to the Court. Directions were given on February 28, 2011, informing the parties that the assessment of costs would proceed in writing and of the time limit for filing submissions.

[2] To support its bill of costs, the Crown served and produced submissions and an affidavit from Julie S. Aubry introducing the documents supporting the disbursements incurred. On March 10, 2011, counsel for Fiducie Dauphin and 9125-9622 Québec Inc. informed the Court by letter that it was no longer representing the interests of the parties and that the directions of February 28, 2011, had been forwarded to the parties' new counsel.

[3] Rule 124 of the *Federal Courts Rules* stipulates, "A party may change or remove its solicitor of record or appoint a solicitor of record by serving and filing a notice in Form 124A, 124B or 124C, as the case may be." Consultation of the record of the Court shows that the status of counsel of record is unchanged, indicating clearly that no notice of change of counsel was served or filed. Notwithstanding this deviation from the Federal Courts Rules, the letter indicating that new counsel had been retained and had been advised of the direction of February 28, 2011, went unacknowledged, and neither further submissions from the parties nor any motion for extension of time were received by the Registry of the Court.

[4] Consequently and in light of my colleague's observations in *Dahl v. Canada*, 2007 FC 192 (OT), at paragraph 2:

Effectively, the absence of any relevant representations by the Plaintiff, which could assist me in identifying issues and making a decision, leaves the bill of costs unopposed. My view, often expressed in comparable circumstances, is that the *Federal Courts Rules* do not contemplate a litigant benefiting by an assessment officer stepping away from a position of neutrality to act as the

litigant's advocate in challenging given items in a bill of costs. However, the assessment officer cannot certify unlawful items, i.e. those outside the authority of the judgment and the Tariff.

[5] I will assess the services claimed under Tariff B of the *Federal Courts Rules*. As in *Dahl*, the assessment of costs in this matter would have been greatly facilitated by the receipt of submissions in response. Nevertheless, in my review of the items claimed, I will ensure that the costs requested correspond to what is provided in the Court's decision as well as the *Federal Courts Rules*.

[6] The units claimed for preparing and filing the originating motion of April 21, 2009 (item 1), which was granted with costs by the Court on April 22, 2009, and the appearance of April 22 (item 6) are allowed as claimed.

[7] Pursuant to the outcomes of the motion from Fiducie Dauphin and 9125-9622 Québec Inc. to vacate the jeopardy collection order and the motion from the Crown to confirm the effective service of the jeopardy collection order, the units claimed for preparing for the pre-trial conferences (item 10) of May 22 and November 27, 2009, and the presence of counsel at the pre-trial conferences and case management conferences (item 11) of May 22, 2009, October 7, 2009, November 27, 2009, and April 13 and 23, 2010, are allowed as claimed.

[8] The units claimed for preparing and filing the motion to confirm the effective service of the jeopardy collection order (item 5) and the appearances in relation to that motion and the motion to vacate the jeopardy collection order are allowed for the hearing dates of April 28, 29 and 30, 2010, May 11, 2010, and June 1 and 2, 2010, under item 6 of the Tariff, since this item specifically covers

appearances of the parties in relation to motions. The appearance dates claimed for the hearing of said motions evidently required planning. However, item 13, as claimed by the Crown, specifically covers legal fees for preparing for trial or a hearing pursuant to actions or applications (Parts 4 and 5 of the *Federal Courts Rules*), which is not the case in the present matter. The fees claimed under item 13 a) and b) are consequently disallowed.

[9] The fees claimed for the hearing of motions on July 13 and 23, 2009, also cannot be allowed since the decisions of the Court pursuant to these hearings make no mention of costs. In *Janssen-Ortho Inc. v. Novopharm Ltd.* 2006 FC 1333, the Court stipulated, “Any pre-trial Order that is silent as to costs means that no costs have been awarded to any party.” Also pursuant to this decision, a final decision of the Court awarding costs to one party does not authorize costs for interlocutory decisions in the record concerning which the Court has not specifically awarded costs.

[10] As stated above, I cannot allow costs for claims outside the authority of the Tariff and the *Federal Courts Rules*. The five units claimed under item 7 for documents submitted to the Court at the hearing on July 23, 2009, are consequently disallowed because the documents in question do not appear to correspond to what is provided in the Rules. Item 7 of Tariff B refers to the conveyance of documents provided in Rules 222 to 232 of the *Federal Courts Rules* under the auspices of actions, which consequently does not apply to the present matter.

[11] The units claimed for preparing the motion record (August 21, 2009) and an amended and contested motion (November 5, 2009) are allowed as submitted. Preparation of the amended notice of motion (April 19, 2010) claimed under item 1 of Tariff B is disallowed. Also according to

Tariff B, only item 3 covers units for the amendment of documents and indicates further that the amendment is necessitated by an amended document of another party. In the matter at hand, the amended document is the originating motion document, and its amendment appears instead to be the result of a series of motion materials.

[12] The units claimed for services after judgment (item 25) and for assessment of costs (item 26) are allowed as submitted.

[13] The disbursements claimed in the bill of costs are not disputed and are considered necessary charges to the conduct of this matter. The amounts are justified and reasonable and are consequently granted.

[14] The Crown's bill of costs is allowed in the amount of \$21,267.58.

“Johanne Parent”
Assessment Officer

Toronto, Ontario
May 13, 2011

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-631-09

STYLE OF CAUSE: IN THE MATTER OF the
INCOME TAX ACT,

AND IN THE MATTER OF ASSESSMENTS AND
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AGAINST

FIDUCIE DAUPHIN AND 9125-9622 QUÉBEC
INC.

**ASSESSMENT OF COSTS IN WRITING WITHOUT PERSONAL APPEARANCE OF
THE PARTIES**

REASONS FOR ASSESSMENT BY: ASSESSMENT OFFICER
JOHANNE PARENT

DATE OF ASSESSMENT: May 13, 2011

WRITTEN SUBMISSIONS:

Martin Lamoureux

FOR THE CROWN

No written submissions

FOR FIDUCIE DAUPHIN AND
9125-9622 QUÉBEC INC.

SOLICITORS OF RECORD:

Myles J. Kirvan
Deputy Attorney General of Canada

FOR THE CROWN

Bardagi Sénéchal Inc.
Montréal, Québec

FOR FIDUCIE DAUPHIN AND
9125-9622 QUÉBEC INC.