

Date: 20070711

Docket: T-185-99

Citation: 2007 FC 741

IN A MATTER pursuant to the *Excise Act*, R.S.C., 1985, c. E-14

AND

IN A MATTER of cigars, manufactured tobacco, raw tobacco

BETWEEN:

HER MAJESTY THE QUEEN

Plaintiff

and

CC HAVANOS CORPORATION LTD

Defendant

REASONS FOR JUDGMENT

W. DOYLE
Assessment Officer

[1] The solicitor, (Me. Dominique Guimond) representing Her Majesty the Queen, filed a Bill of Costs following the Judgment by the Federal Court of Appeal in file A-565-02. The March 17, 2004 judgment issued by the Court (Décary J.A., Létourneau J.A., Nadon J.A.) stated:

“The appeal is allowed without costs and the decision of the Federal Court is set aside. Rendering the judgment that should have been rendered, the action in claim of the respondent is dismissed with costs and all the material seized and forfeited pursuant to section 88 of the *Excise Act* is condemned.”

[2] The Assessment for the Bill of Costs filed by Me. Guimond was assigned to me with the request for disposition by way of writing. Upon cursory review of the file and based on the wording (copied above) I wrote both parties (Me. Guimond and Me. Bruce Taub) expressing concern as to the authority to assess this Bill of Costs filed in the Federal Court of Appeal (A-565-02) as opposed to the Federal Court (T-185-99).

[3] I explained that until July 2003, the Federal Court of Canada consisted of two divisions: an Appeal Division and a Trial Division. With amendments to the **Federal Courts Act** coming into force on July 2, 2003, these divisions became two separate courts: the Federal Court of Appeal and the Federal Court. I invited the parties' comments as to whether an assessment in the Federal Court of Appeal may still proceed.

[4] Both Rules 2 and 405 of the **Federal Courts Rules** provide that costs be assessed by an assessment officer. By Order of the Court dated March 22, 2002 I have been designated an assessment officer and pursuant to Rule 502 of the **Federal Courts Act** and Rule 187(2) of the **Courts Administration Services Act** my appointment, being made prior to the coming into force of this Act in 2003, is continued and is still valid.

[5] Me. Guimond alone replied to my invitation for comments as to whether an assessment in the Federal Court of Appeal may proceed. Me. Guimond stated:

"...the bill of costs, although presenting Court file A-565-02, refers to the costs incurred in the Federal Court file. Since the assessment of costs is made by the same officers for both the Federal Court and the Federal Court of Appeal, the assessment should proceed as asked in our Nov. 14, 2006 letter. This proceeding will also prevent us from having to file a new bill of costs and affidavits with the heading of the Federal Court file."

[6] I now refer to **Federal Courts Rules** Rule 3 which states:

"General Principle - These Rules shall be interpreted and applied so as to secure the just, most expeditious and least expensive determination of every proceeding on its merits."

Consequently, I placed a copy of the Bill of Costs on the related Federal Court file (T-185-99). Earlier a timetable was issued to both parties for written submissions in relation to the Bill of Costs. Me. Taub did not file any submissions in opposition. Me Guimond confirmed no further representations would be submitted in this claim. In respect of the information provided in paragraphs [2], [3], [4], [5] and this paragraph [6] together with a thorough review of both files I will continue with the assessment of the Bill of Costs in Federal Court file T-185-99.

[7] The assessable services units were presented as follows: item 2 -Preparation and filing of all defences, replies, counterclaims or respondents' records and materials requested seven units, item 7 - Discovery of documents, including listing, affidavit and inspection requested five units, item 10 - Preparation for conference, including memorandum requested six units, item 11 - attendance at conference, per hour requested ½ unit (duration 30 minutes), item 13 Counsel fee - a) preparation for trial or hearing , whether or not the trial or hearing proceeds, including correspondence, preparation of witnesses, issuance of subpoenas and other services not otherwise particularized in this tariff requested five units, item 14 a) Counsel fee: to first counsel, per

hour in Court requested three units (duration 6 hours 42 minutes), item 25 –Service after judgment not otherwise specified requested one unit, item 26 Assessment of costs requested six units and item 27 – such other services as may be allowed by the assessment officer or ordered by the Court requested three units. In total, counsel for the Plaintiff requested assessable services totaling \$6,006.00.

[8] In this, as in all assessment of costs proceedings, I must take a position of neutrality. An assessment officer may neither advocate for any one party, nor allow assessable services and disbursements which fall outside the ***Federal Courts Rules*** and the associated tariffs. In this assessment I note counsel has requested the highest unit value for all assessable fees, since units claimed appear reasonable for this type of litigation and in the absence of any objection, I allow the items as claimed with two exceptions.

[9] Item 26 Assessment of costs is reduced to two units from the requested six since the Bill of Costs was straightforward, done by written submission and was unopposed. Two units will be allowed for item 26. Item 27 - such other services as may be allowed by the assessment officer or ordered by the Court is reduced to zero. Respectfully, I believe item 27 is meant to indemnify counsel for extraordinary items not covered elsewhere in the Tariff. Zero units will be allowed for item 27.

[10] Based on the foregoing reasoning the total assessable service amount will be reduced from the requested \$6,006.00 to an allowed total assessable service amount of \$5, 236.00.

[11] Disbursements are awarded in the amount of \$832.41 as they were established by the affidavit of Suzanne Dussault Harvey and its attached exhibits.

[12] The bill of costs presented at \$6,838.41 is accordingly assessed and allowed in the amount of \$6, 068.41. A certificate is issued in the Federal Court proceeding for \$6,068.41.

“Willa Doyle”
Assessment Officer

Fredericton, New Brunswick
July 11, 2007

FEDERAL COURT
NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: T-185-99

STYLE OF CAUSE: H ER MAJESTY THE QUEEN and
CC HAVANOS CORPORATION LTD

ASSESSMENT OF COSTS IN WRITING WITHOUT PERSONAL APPEARANCE OF
THE PARTIES

ASSESSMENT OF COSTS -
REASONS BY: Willa Doyle, Assessment Officer

DATED: July 11, 2007

WRITTEN REPRESENTATIONS BY:

Me. D. Guimond FOR THE PLAINTIFF

SOLICITORS OF RECORD:

Department of Justice FOR THE PLAINTIFF
Montréal, Québec

Bruce Taub FOR THE DEFENDANT
5621 Cork Ave, Montréal, Québec