

Docket: 2014-3081(IT)I

BETWEEN:

STEPHEN C. DAVIS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on March 17, 2015, at Vancouver, British Columbia.

Before: The Honourable Justice Patrick Boyle

Appearances:

Agent for the Appellant: Bryant Lukiv
Counsel for the Respondent: Shankar Kamath

JUDGMENT

In accordance with the reasons delivered orally at the hearing (a copy of which is attached hereto), the appeal from the reassessments made under the *Income Tax Act* for the Appellant's 2007, 2008, 2009 and 2010 taxation years is dismissed, with costs fixed at \$1,185.

Signed at Ottawa, Canada, this 31st day of March 2015.

“Patrick Boyle”

Boyle J.

BETWEEN:

STEPHEN C. DAVIS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

EDITED VERSION OF TRANSCRIPT
OF ORAL REASONS FOR JUDGMENT

Let the attached edited transcript of the Reasons for Judgment delivered orally from the Bench at Vancouver, British Columbia on March 17, 2015 be filed. I have edited the transcript (certified by the Court Reporter) for style, clarity and to make minor corrections only. I did not make any substantive changes.

Signed at Ottawa, Canada this 31st day of March 2015.

“Patrick Boyle”

Boyle J.

Citation: 2015 TCC 79
Date: 20150331
Docket: 2014-3081(IT)I

BETWEEN:

STEPHEN C. DAVIS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

(Appeal heard and decision rendered orally from the Bench
on March 17, 2015 at Vancouver, British Columbia.)

Boyle J.

[1] The history of this appeal by Mr. Davis of his 2007 through 2010 taxation years arose out of an audit by the CRA of a corporation wholly-owned by him. In doing that audit, the CRA auditor sought to verify that the amounts taken out of the corporate account by cheques or otherwise to Mr. Davis were reported by Mr. Davis as income. Mr. Davis had reported some income as employment income, supported by a T-4 issued by that company. I understand other amounts were reported by the corporation and Mr. Davis as subcontract payments to him.

[2] CRA treated the difference between what was reported by Mr. Davis and what was paid to him by the company as income for each of the years 2007 through 2010.

[3] The amounts are not in dispute. The taxpayer and his representative, Mr. Lukiv, have acknowledged that if their legal positions relating to the *Canadian Constitution, Charter* and international human rights treaties do not succeed, the amounts reassessed are not disputed and are payable.

[4] The taxpayer and his representative have also, I believe, acknowledged that, in the circumstances, the penalties would be properly payable as assessed. However, in any event, I am also satisfied from the government's evidence, both

the testimony of the auditor and his consistent supporting contemporaneous audit documents and from the assumptions made by the Minister in assessing the penalties which were disclosed and reasonable and unchallenged, and from the fact that the taxpayer's positions were, if not inconsistent, certainly fluctuating over the years as to the basis of why he disputed his taxes, that, even had the taxpayer not agreed, the onus on the Crown to discharge that the penalties are properly payable was satisfied.

[5] There were arguments today and in the written materials that went well beyond what was in the notice of appeal, relating to persons, corporations, human beings, living souls, certificates of live birth and punctuation appearing in people's names. It was conceded by Mr. Davis and his representative that they were not advancing the "natural persons" type arguments usually associated with those references. This was wise, given that the Federal Court of Appeal has most recently, in the *Ian Brown* case, rejected and upheld this court in rejecting "natural persons" type arguments.

[6] The written argument handed in today included several pages on the *Judges Act*. There was some discussion and submissions by Mr. Davis' representative that, in the circumstances, it was their opinion that neither this court nor the judges of this court, nor any court nor any judges in Canada, could be considered to satisfy Canadians' rights to have things heard by an independent person and an independent court. Mr. Lukiv acknowledged that he had trouble framing any relief request, given that, had I agreed with him, my opinion became worthless. So he left that dangling. I could not do anything with it in any event. So, that was dealt with satisfactorily to Mr. Lukiv.

[7] There were also references to being presumed innocent until proven guilty in the written arguments. On questioning, Mr. Lukiv acknowledged that Mr. Davis had not been charged with an offence, and we had previously discussed what the onus was in the Tax Court as compared with a criminal court. It is not beyond a reasonable doubt; rather, it is the balance of probabilities, 50 percent plus 1, that we talked about this morning.

[8] So, the only substantive issue, while multi-pronged, is what I will refer to as the Constitutional/Charter/international treaties, all as they concern the human rights arguments that Mr. Lukiv and Mr. Davis wanted to advance. I certainly agree with them and do not deny that all such rights exist as phrased in our Charter and in our Constitution. The problem that Mr. Davis and Mr. Lukiv face is that the courts have been clear that those rights do not extend to not paying tax, nor do they

include expressly or otherwise a right to not pay tax. The courts have been clear and consistent. I really need not spill any more ink on this point.

[9] For these reasons, I will be dismissing the appeal. Under the *Rules* of the Court, in an informal case, I am able to award costs payable against an unsuccessful taxpayer if the appellant has unduly delayed the prompt and effective resolution of the appeal. In addition to my view that continuing to pursue these arguments, many, many Canadians are abusing the process of the Court, I am also satisfied that today Mr. Davis, simply by bringing these arguments forward once again with no prospect for success, unduly delayed the prompt and effective resolution of his appeal. Therefore, I am awarding costs against him in the amount of \$1,185, which is the aggregate of the amounts in *Rule* 11 for preparing for the hearing, filing the pleadings, and the conduct of a day's hearings.

Signed at Ottawa, Canada, this 31st day of March 2015.

“Patrick Boyle”

Boyle J.

CITATION: 2015 TCC 79
COURT FILE NO.: 2014-3081(IT)I
STYLE OF CAUSE: STEPHEN C. DAVIS AND HER
MAJESTY THE QUEEN
PLACE OF HEARING: Vancouver, British Columbia
DATE OF HEARING: March 17, 2015
REASONS FOR JUDGMENT BY: The Honourable Justice Patrick Boyle
DATE OF JUDGMENT: March 31, 2015

APPEARANCES:

Agent for the Appellant: Bryant Lukiv
Counsel for the Respondent: Shankar Kamath

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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