

Citation: 2008 TCC 418

Date: 20080722

Docket: 2007-3396(IT)I

BETWEEN:

EYVONE WILLIAMS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

ORAL REASONS FOR JUDGMENT

(Delivered from the Bench on June 18, 2008
at Toronto, Ontario)

Campbell J

[1] The appeal is in respect to the Appellant's 2004 taxation year.

[2] Ms. Williams is a Registered Nurse who worked for the City of Toronto since 1989, until she was involved in an accident on August 10, 2001. She was unable to work for over two years.

[3] One of the benefits she received while working for the City was involvement in a long-term disability insurance plan. This plan was funded by both employer and employee premiums, with the City paying all of the premiums up to August 2002, approximately one year after the accident, and the Appellant paying the premiums to the plan after August 2002.

[4] The City paid the premiums for one year after the accident but since the Appellant was still unable to return to work, she had to commence payment of these premiums to maintain the plan.

[5] Ms. Williams continued to pay these premiums after August 2002 because her claim to Manufacturers Life Insurance (“ManuLife”) had not been settled.

[6] She hired a lawyer and commenced her legal action against ManuLife in late 2001. A settlement was reached in which ManuLife paid \$57,500 to Ms. Williams' lawyer, in trust, with \$7,500 of that amount designated as legal fees. From this total the solicitor actually withheld \$21,173.58 for legal fees plus disbursements.

[7] ManuLife issued a T4A to Ms. Williams, which at box 28 of the form, included under the heading "other income", the amount of \$50,000 and referenced it in this form as “wage loss replacement”.

[8] The Minister of National Revenue (the “Minister”) reassessed the Appellant to include the amount of \$50,000 (\$57,500 total settlement less \$7,500 designated as legal fees in the settlement document) as income as per the T4A slip issued by ManuLife in respect to a wage loss replacement payment.

[9] Ms. Williams was also permitted a deduction for legal fees incurred to collect this payment in the amount of \$21,173.

[10] The Minister further reassessed to recalculate for the qualifying retroactive lump sum payment in respect to the wage loss payment in accordance with information provided by the Appellant on form T1198E. This meant that the \$50,000 payment was allocated to the Appellant's 2002 and 2003 taxation years in the amount of \$25,000 in each year.

[11] The Appellant was also given a deduction from income of \$1,492 in respect to employee premiums which she paid in 2002 and 2003 to the plan after her employer ceased to make those payments.

[12] This special method of recalculation of tax was at the Appellant's request and the federal tax calculated according to form T1198E was more beneficial to the Appellant than computing the tax on the entire amount for the 2004 taxation year.

[13] According to the evidence of Randal King, the Senior Claims Consultant with ManuLife, the plan which the City held was an “administrative services only” plan. He explained that all financing was done through the employer, with ManuLife

administering the plan. He testified that the Appellant made a request to ManuLife in June 2005 to have the payment classified as an insurance benefit rather than taxable income as per the T4A slip which had been issued.

[14] Mr. King checked with the taxation department of ManuLife, which confirmed that the payment would be a wage loss replacement amount. The Appellant's request to change this was refused.

[15] Mr. King testified that the disability insurance payment would not be a taxable benefit if the policy states that they are not taxable, and where the employee paid one hundred per cent of the premiums.

[16] In this case the Appellant did not pay all of the premiums except for a brief period after 2002 and her policy, according to Mr. King's evidence, stated that it was a taxable benefit.

[17] The issues are: 1) whether the \$50,000 payment to the Appellant is a taxable benefit and, 2) if I decide the amount is not a taxable benefit, whether the Appellant can deduct the legal fees of \$21,173 and employee premiums of \$1,492 which she paid to this plan, both of which amounts have been previously allowed as a deduction.

[18] It would have been helpful if I had been provided with a copy of the policy or the plan which governed the Appellant's entitlement to these benefits. In addition, I was given only the first page of the full and final release document which the Appellant executed, Exhibit A-2, when she settled her legal claim. Attached to this first page of the release was one page showing the solicitor's account of fees and disbursements, with the final payment to the Appellant.

[19] The first paragraph of the one page of this release referred to the claim simply as being one for the payment of benefits under the policy.

[20] The issue turns on whether the amount allocated as benefits in the release was payable on a periodic basis pursuant to a disability insurance plan in accordance with paragraph 6(1)(f) of the *Income Tax Act* (the "Act").

[21] Paragraph 6(1)(f) reads as follows:

There shall be included in computing the income of a taxpayer for a taxation year as income from an office or employment such of the following amounts as are applicable:

...

- (f) the total of all amounts received by the taxpayer in the year that were payable to the taxpayer on a periodic basis in respect of the loss of all or any part of the taxpayer's income from an office or employment, pursuant to

...

- (ii) a disability insurance plan, ...

[22] The Supreme Court of Canada in the case of *Tsiaprailis v. Canada*, [2005] S.C.J. No. 9, at paragraph 7, stated that the tax treatment of a transaction is dependant upon what the amount or payment was intended to replace. Therefore I must look at the nature and purpose of the settlement payment to the Appellant to determine if it falls within the scope of paragraph 6(1)(f) and therefore would be taxable. This is essentially a factual determination.

[23] At paragraph 15 of that case the Supreme Court set forth the following two questions which will be determinative:

- (1) what was the payment intended to replace? And, if the answer to that question is sufficiently clear, (2) would the replaced amount have been taxable in the recipient's hands?

[24] Because I do not have the policy or the full release agreement before me, I must rely solely on the evidence of the Appellant and Mr. King of ManuLife, as well as a few sketchy documents to answer these queries.

[25] The Appellant testified that she believed she would obtain periodic payments once she instituted her legal action. Under the insurance plan she believed she would be entitled to, and would receive, approximately 75 per cent of her wages, although she settled for much less as she required immediate income to pay her bills.

[26] Mr. King confirmed that ManuLife issued a T4A slip to the Appellant when she settled her claim and signed the release and allocated the amount as a wage loss replacement because the employer, the City of Toronto, paid the premiums for one year after the accident and the policy referred to amounts paid as taxable benefits according to the evidence. Again, since I did not have the policy before me I have

only the evidence of the Appellant and Mr. King to rely on but I have no reason to believe that the evidence does not reflect the reality of these documents.

[27] The evidence which I do have establishes that the lump sum payment of \$50,000 was taxable income payable to the Appellant in lieu of payments on a periodic basis according to the evidence of both the Appellant and Mr. King and in accordance with paragraph 6(1)(f) of the *Act*.

[28] The fact that the amount was less than the Appellant felt she was entitled to will not change the nature and purpose of the amount that she agreed to accept.

[29] In addition, I do not believe that the nature of the policy changed when the Appellant took over payment of the premiums in 2002 in order to maintain this plan. The plan in effect at the time of the accident was a plan in which the City of Toronto paid all of the premiums and, therefore, the policy remains within the ambit of Mr. King's testimony, with the payment made to the Appellant pursuant to this policy.

[30] The replaced amount would certainly have been taxable in the recipient's hands.

[31] As an alternative argument, the Respondent contends that if I did find that the \$50,000 amount was not taxable, then there can be no deduction for the legal fees under sections 8(1)(b) and 8(2) or for the premiums which the Appellant paid after 2002.

[32] I agree that this would be the result and although I have not completed calculations, I believe that the Appellant would be in only a slightly better monetary position if I had allowed the appeal with the \$50,000 amount as a non-taxable benefit and denied the deduction for legal fees and the premium amount which she paid.

[33] The Appellant has simply not met the onus or burden of proof as no facts were introduced to overcome the Minister's assumptions.

[34] Accordingly, for these reasons I must dismiss the Appellant's appeal.

[35] I wish to have it on record, and since you are here, Ms. Aird, I understand that in dismissing the appeal that it will not affect the Appellant's application which she originally made to have the \$50,000 amount allocated to 2002 and 2003 between each of those years rather than 2004.

Signed at Charlottetown, Prince Edward Island, this 22nd day of July 2008.

“Diane Campbell”

Campbell J.

CITATION: 2008 TCC 418

COURT FILE NOS.: 2007-3396(IT)I

STYLE OF CAUSE: Eyvone Williams and
Her Majesty the Queen

PLACE OF HEARING Toronto, Ontario

DATE OF HEARING June 16, 2008

REASONS FOR JUDGMENT BY: the Honourable Justice Diane Campbell

DATE OF ORAL JUDGMENT June 18, 2008

APPEARANCES:

Agent for the Appellant: Anderson T. Walcott

Counsel for the Respondent: Kandia Aird

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: John H. Sims, Q.C.
Deputy Attorney General of Canada
Ottawa, Canada