

Dockets: 2013-2091(GST)I  
2014-1493(GST)I  
2016-839(GST)I  
2016-4837(IT)G

BETWEEN:

PAUL BUDAY O/A BUDAY AUTO SALES,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent;

Docket: 2016-4831(IT)G

AND BETWEEN:

GLEN BUDAY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

---

Motion determined by Written Submissions / Order as to Costs

Before: The Honourable Justice David E. Graham

Participants:

Agent for the Appellant,           Glen Buday  
Paul Buday o/a Buday Auto  
Sales:

For the Appellant, Glen Buday:   The Appellant himself

Counsel for the Respondent:       Paul Klippenstein

---

**ORDER**

One set of costs in the amount of \$48,100 is awarded to the Respondent in respect of the Appeals. The Appellants shall be jointly and severally liable for the payment of those costs. The costs are payable immediately.

Signed at Ottawa, Canada, this 8th day of August 2019.

“David E. Graham”

---

Graham J.

Citation: 2019 TCC 164  
Date: 20190808  
Dockets: 2013-2091(GST)I  
2014-1493(GST)I  
2016-839(GST)I  
2016-4837(IT)G

BETWEEN:

PAUL BUDAY O/A BUDAY AUTO SALES,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent;

Docket: 2016-4831(IT)G

AND BETWEEN:

GLEN BUDAY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR ORDER**

Graham J.

[1] In my Judgment dated June 4, 2019, I allowed the Appellants' appeals. I provided the parties with time to reach an agreement on costs, failing which the parties were to make written submissions regarding costs. The parties were unable to reach an agreement and have now made written submissions.

[2] The Appellants are requesting that each party bear their own costs.

[3] The Respondent is requesting lump sum costs of \$46,000 plus costs in respect of the Respondent's submissions on costs.

### **Costs of the Appeals**

[4] At paragraph 118 of my Reasons for Judgment, I advised the parties that my impressions were that:

- (a) despite the significant reductions in income that resulted from the appeals, the Respondent was largely successful as there was never any doubt that half of the income assessed would be reversed;
- (b) at least half of the ten days of trial and the entire day off in the second week of trial would not have been necessary had the Appellants:
  - i. taken advantage of the opportunity provided to them in the discovery process to examine [the auditor] in order to better understand how he reached the conclusions that he did;
  - ii. made any attempt to determine what expenses and input tax credits the business had claimed;
  - iii. made any attempt to organize documents to support those claims;
  - iv. obtained a [registration identification number] search for the business and reconciled it to the vehicles that the business had reported;
  - v. utilized the year between the first part of the trial and the second to familiarize themselves with the documents entered into evidence by the Respondent;
  - vi. avoided repetitive testimony on relatively minor points; and
  - vii. not repeatedly attempted to lead evidence of or opine on how the audit should have been conducted;
- (c) despite the Appellants' beliefs to the contrary, no fault for the unnecessary length of the trial can be placed on the Minister, the Department of Justice or the Court;

- (d) due to the fact that the appeals were heard together, one set of costs would be appropriate rather than two; and
- (e) any costs payable by the Appellants should be payable jointly and severally.

[5] Nothing in the Appellants' written submissions on costs has changed those impressions. The Appellants' written submissions amounted to little more than an attempt to re-litigate the trial. I see no reason why significant costs should not be awarded against the Appellants.

[6] The Respondent is seeking one set of costs in respect of all of the appeals. The Respondent asks that those costs be jointly and severally payable by the Appellants. In simplified terms, the Respondent seeks costs in accordance with Schedule II, Tariff B of the *Tax Court of Canada Rules (General Procedure)* for a Class C proceeding. The Respondent also requests that an additional set of costs in accordance with the Tariff be awarded in respect of the five days of wasted trial time and a further half day of trial costs be awarded in respect of the day thrown away. Finally, the Respondent seeks to have its disbursements covered. Using this approach, the Respondent calculates its total costs as \$46,221.67 which the Respondent then rounds down to \$46,000.

[7] I find the Respondent's approach to be more than reasonable in the circumstances and accordingly award costs of \$46,000 in respect of the Appeals. The Appellants' refusal to admit facts that should have been admitted and their complete lack of preparation resulted in a significant waste of both the Respondent's and the Court's resources. In the circumstances costs calculated in the manner requested by the Respondent will both serve to compensate the Respondent and deter others from engaging in similar behaviour.

### **Costs in Respect of Submissions on Costs**

[8] Given the guidance that I provided to the parties in my Reasons for Judgment, the parties should have been able to resolve the issue of costs without my involvement. I specifically warned the parties that any costs that I awarded would take into account whether the parties had paid sufficient attention to my guidance.

[9] It is clear to me that the Appellants did not pay any attention to my guidance. The Appellants' assertion that they should not pay any costs was

completely without merit. This unreasonable position forced the Respondent to spend needless time preparing submissions in respect of costs. The Respondent should not have to once again bear the cost of the Appellants' stubbornness. The Tariff cost for submissions on costs is \$700. Given the Appellants' failure to even attempt to come to an agreement on costs, I find that an award of costs equal to triple the Tariff amount is appropriate. Accordingly, I award costs in the amount of \$2,100 to the Respondent in respect of the Respondent's submissions on costs.

### **Summary**

[10] One set of costs in the total amount of \$48,100 is awarded to the Respondent. The Appellants are jointly and severally liable for those costs. The costs are payable immediately.

Signed at Ottawa, Canada, this 8th day of August 2019.

“David E. Graham”

---

Graham J.

CITATION: 2019 TCC 164

COURT FILE NOS.: 2013-2091(GST)I  
2014-1493(GST)I  
2016-839(GST)I  
2016-4831(IT)G  
2016-4837(IT)G

STYLES OF CAUSE: PAUL BUDAY O/A BUDAY AUTO  
SALES v. HER MAJESTY THE QUEEN  
  
GLEN BUDAY v. HER MAJESTY THE  
QUEEN

DATE OF HEARING: Motion determined by Written Submissions

REASONS FOR ORDER BY: The Honourable Justice David E Graham

DATE OF ORDER: August 8, 2019

PARTICIPANTS:

Agent for the Appellant, Paul Buday o/a Buday Auto Sales: Glen Buday

For the Appellant, Glen Buday: The Appellant himself

Counsel for the Respondent: Paul Klippenstein

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:

Nathalie G. Drouin  
Deputy Attorney General of Canada  
Ottawa, Canada