

BETWEEN:

GARY SWEETMAN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Motion determined by Written Submissions  
Before: The Honourable Justice David E. Graham

Participants:

For the Appellant: The Appellant himself

Counsel for the Respondent: Priya Bains

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**ORDER**

Pursuant to section 160 of the *Tax Court of Canada Rules (General Procedure)*, this Court orders that the Appellant shall pay the following amounts into Court on or before the following dates as security for the Respondent's costs:

- a) \$3,000, on or before April 15, 2020;
- b) \$4,000, on or before the date that is 30 days prior to the deadline for completing his examination for discovery; and
- c) \$12,375, upon filing a joint request for a hearing date.

Signed at Ottawa, Canada, this 6th day of March 2020.

“David E. Graham”

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Graham J.

Citation: TCC 2020 36  
Date: 20200306  
Docket: 2018-1524(IT)G

BETWEEN:

GARY SWEETMAN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR ORDER**

Graham J.

[1] The Respondent has brought a motion seeking an order pursuant to section 160 of the *Tax Court of Canada Rules (General Procedure)* (the “Rules”) that the Appellant, Gary Sweetman, pay \$19,375 into Court as security for costs in this appeal within 30 days of the date of the order. Mr. Sweetman opposes the order.

#### **Security for Costs**

[2] There are two preconditions that must be satisfied before an order for security for costs under section 160 can be granted. First, the Appellant must be resident outside of Canada. Second, pursuant to section 161, the Respondent must have filed a Reply. I am satisfied that both of these preconditions have been met. What remains is for me to determine whether it would be just to grant the Respondent’s motion. In doing so, I will consider a number of factors.

#### **Likelihood of Success**

[3] Mr. Sweetman claimed donation tax credits in his 2004, 2005, 2006 and 2007 tax years in relation to almost \$3,000,000 in gifts he claims to have made through a promoted program known as the Global Learning Gifting Initiative (“GLGI”). The Minister of National Revenue reassessed Mr. Sweetman to deny those credits. Mr. Sweetman appealed that denial.

[4] There were tens of thousands of taxpayers who claimed donation tax credits in respect of gifts purportedly made to GLGI. The Crown took two lead cases to trial. Mr. Sweetman chose not to be bound by those lead cases. In a decision reported as *Mariano v. The Queen*,<sup>1</sup> Justice Pizzitelli dismissed the appeals. He found, among other things, that the Appellants “did not have the donative intent to make any of their gifts, did not own or transfer the property that is the subject matter of the gift in kind...and that the Program was a sham”.<sup>2</sup>

[5] Mr. Sweetman filed his appeal after the decision in *Mariano* was issued. There is nothing in Mr. Sweetman’s Notice of Appeal or his submissions in respect of this motion that indicates how he believes his appeal can be distinguished from *Mariano*. While he raises some issues that were not canvassed in *Mariano*, these issues are ones over which this Court does not have jurisdiction.

[6] Mr. Sweetman questions whether the Minister conducted a proper review of his file before reassessing, whether the Minister is statute barred from collecting the debts that result from the reassessments, whether the actions of the Canada Revenue Agency amounted to cruel and unusual punishment and whether the Minister failed to warn taxpayers of potential issues surrounding the GLGI program. He also seeks a waiver of interest. The Court does not have jurisdiction to consider any of these issues.

[7] There have been several GLGI appeals heard since *Mariano*.<sup>3</sup> The Respondent has been successful in each of them.

[8] In October 2019, Mr. Sweetman made submissions regarding a separate issue. Those submissions referred to T1-Adjustment requests that he had made for some or all of the years in question. He indicated that at least one of those requests involved a loss carryback. Mr. Sweetman says that the Minister has not processed these requests. He raised this issue again in his submissions on this motion. However, Mr. Sweetman did not plead the underlying adjustments as issues in his Notice of Appeal and has not sought to amend his Notice of Appeal to raise these

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<sup>1</sup> 2015 TCC 244.

<sup>2</sup> *Mariano* at para. 146.

<sup>3</sup> Written decisions were issued in *Tudora v. The Queen*, 2020 TCC 11 and *Wiegers v. The Queen*, 2019 TCC 260.

issues. As a result, I have not considered them when evaluating his likelihood of success. I neither know what he intends to argue nor whether he actually intends to argue it. I note that even if Mr. Sweetman were to seek to amend his pleadings to raise these issues, his doing so would only increase the complexity of his trial and thus would argue for greater, not less, security for costs.

[9] In light of all of the foregoing, I find that the Respondent has a high likelihood of success in this appeal. Mr. Sweetman has not provided me with any basis upon which I could conclude that the outcome of his appeal could differ at all from *Mariano*. This is a significant factor supporting an award of security for costs.

#### **Ability of Respondent to Enforce Costs Award**

[10] The ability of the Respondent to enforce a future costs award is an important factor to be considered (*Mathias v. The Queen*<sup>4</sup>). Mr. Sweetman did not provide any evidence that would suggest that the Respondent could collect costs without difficulty. I find that this factor supports the awarding of security for costs.

#### **Reasonableness of Costs Estimate**

[11] The Respondent is seeking costs of \$15,375 and disbursements of \$4,000 for a total of \$19,375. The Respondent bases these figures on the tariff rates for a Class C proceeding involving two days of discovery and a five-day trial.

[12] The best indicator of the potential length of Mr. Sweetman's trial is the length of the trial in *Mariano*. That trial took 25 days to hear. Presumably, subsequent trials will be more efficient. However, since Mr. Sweetman has not clarified how he intends to distinguish his appeal from *Mariano*, it is difficult to know how long the discovery and trial may take. Mr. Sweetman asserts that the trial will not take five days but has neither explained why he believes this to be true nor indicated how long he thinks it will take.

[13] I acknowledge that the GLGI trials since *Mariano* have taken less than a day to hear. However, that was because the appellants in those cases either brought little or no evidence or raised arguments outside of this Court's jurisdiction. I

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<sup>4</sup> 2017 FCA 19.

presume Mr. Sweetman must be intending to follow a different, more productive approach.

[14] In light of all of the foregoing, I find the Respondent's estimate of five days of trial and two days of discovery to be reasonable.

[15] In *Mariano*, Justice Pizzitelli awarded costs of approximately \$490,000 to the Crown.<sup>5</sup> That figure consisted of \$41,075 in legal fees. The balance was disbursements. I note that the Respondent's estimate does not include any disbursements for expert witnesses. Such witnesses represented a very significant portion of the cost in *Mariano*.

[16] In light of all of the foregoing, the best evidence that I have is that the Respondent's estimate of \$15,375 in legal fees and \$4,000 in disbursements is reasonable. This finding favours the awarding of security for costs.

### **Retention of Counsel**

[17] Mr. Sweetman submits that he has retained counsel. He argues that the Respondent's estimated costs are therefore too high. While Mr. Sweetman does not explain how he reaches this conclusion, I presume that he takes the position that, since this counsel represents another GLGI appellant, the Respondent's costs will now be spread over two appellants. While there may be merit to this argument, Mr. Sweetman has not, in fact, retained counsel. He may have consulted with and obtained advice from counsel but he has not actually appointed counsel to represent him in his appeal. Mr. Sweetman first indicated his intention to retain counsel in December. As he has not yet done so, I do not consider this to be a relevant factor.

### **Ability to Pay**

[18] Mr. Sweetman claims to have a very large negative net worth and a low monthly income. However, he did not provide any documentary evidence by which I could assess the accuracy of his claims. I place no weight on Mr. Sweetman's

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<sup>5</sup> *Mariano v. The Queen*, 2016 TCC 161. There was an adjustment to the disbursements. It is not possible to determine the quantum of the adjustment from the reasons.

unsupported assertions. I accordingly find that there is no evidence that he would not be able to provide the security requested.

### **Ministerial Delays**

[19] Mr. Sweetman submits that the Minister delayed the audit and reassessment of his tax years and the consideration of his notices of objection. He submits that, had the Minister dealt with his objections promptly, he would still have been a resident of Canada when he filed his appeal and would thus not be required to provide security. While I am not convinced that this is a relevant factor, I will nonetheless address it.

[20] Mr. Sweetman objected to his reassessments in 2008 and 2010. Paragraph 169(1)(b) of the *Income Tax Act* allowed Mr. Sweetman to appeal to this Court 90 days after filing his notices of objection. If he wanted to ensure that he was a Canadian resident when he filed his appeal, he should have taken advantage of that provision and appealed to this Court quickly. I do not consider this factor to be relevant to my determination.

### **Interest Waiver**

[21] Mr. Sweetman submits that the Ministerial delay in dealing with his reassessments has also led to unnecessary interest accruing on the tax in issue. He states that he has applied for a waiver of that interest pursuant to the taxpayer relief provisions but the Minister has not yet responded. Mr. Sweetman argues that this lack of response has left him uncertain of the total amount in dispute and thus unable to make proper decisions regarding the conduct of the litigation.

[22] This Court does not have jurisdiction over either the waiver of interest or the timely resolution of applications for taxpayer relief. Jurisdiction over both of those matters lies with the Federal Court.

[23] While I understand Mr. Sweetman's frustration, I cannot see the relevance of these issues to the question of security for costs. If the Respondent were seeking security for Mr. Sweetman's underlying tax debt, then a potential reduction to that debt through an interest waiver would be a very relevant factor. However, that is not what the Respondent is seeking. What the Respondent is seeking is to cover the Respondent's expected costs of litigation in this Court. Potential reductions to Mr.

Sweetman's underlying tax debt through a process over which this Court has no jurisdiction have no bearing on those costs.

### **Conclusion**

[24] Based on all of the foregoing, I find that it is appropriate to order that Mr. Sweetman provide security for the Respondent's costs in the amount of \$19,375.

### **Nature and Timing of Security**

[25] Having determined that it is appropriate for Mr. Sweetman to provide security, I have the discretion to determine the amount and form of the security and when and how the security shall be provided (section 162).

[26] I find that it is appropriate for Mr. Sweetman to provide security by payment into Court. He offered no other suggestion as to how security could be provided.

[27] Mr. Sweetman submits that, if he has to provide security, he should not have to provide it all at once. I agree. There is no need for all of the security to be provided up front.

### **Order**

[28] Based on all of the foregoing, I order that Mr. Sweetman pay the following amounts into Court on or before the following dates:

- a) \$3,000 on or before April 15, 2020;
- b) \$4,000, on or before the date that is 30 days prior to the deadline for completing his examination for discovery; and
- c) \$12,375 upon filing a joint request for a hearing date.

[29] As Mr. Sweetman is self-represented, I think that it is important that I draw to his attention the fact that if he fails to provide the above security when required,

the Respondent may bring an application to dismiss his appeal pursuant to section 164.

Signed at Ottawa, Canada, this 6th day of March 2020.

“David E. Graham”

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Graham J.



CITATION: TCC 2020 36  
COURT FILE NO.: 2018-1524(IT)G  
STYLE OF CAUSE: GARY SWEETMAN v. THE QUEEN  
DATE OF HEARING: Motion determined by Written Submissions  
REASONS FOR ORDER BY: The Honourable Justice David E. Graham  
DATE OF ORDER: March 6, 2020

PARTICIPANTS:

For the Appellant: The Appellant himself  
Counsel for the Respondent: Priya Bains

COUNSEL OF RECORD:

For the Appellant:

Name: n/a

Firm: n/a

For the Respondent: Nathalie G. Drouin  
Deputy Attorney General of Canada  
Ottawa, Canada