

**IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CIVIL DIVISION)**

OA NO. 3/2007

BETWEEN **TATUROANUI GRAHAM CROCOMBE**
of Rarotonga, Company Director
Appellant

AND **GEOFFREY COLIN STODDART** Collector
of Revenue Management
Respondent

Hearing: On the papers

Counsel: Submissions of Messrs PW David & IF Hikaka dated 12 September 2012
Submissions of Mr MJ Ruffin dated 30 August and 1 September 2012

Date of Judgment: 2012

JUDGMENT (NO. 2) OF HUGH WILLIAMS J

RESULT

A. The respondent was correct in assessing the appellant in the sum of \$187,500 for the amount credited to the appellant by The Rarotongan for the 2002 financial year subject to the leave reserved in para [4] of this judgment.

B. The appellant is to pay the costs of the respondent in the sum of \$20,902.93 plus disbursements of \$3,160.22.

AMOUNT OF JUDGMENT

[1] In paragraph [137] of the reserved judgment of the Court delivered on 3 August 2012 in relation to this appeal the Court, after answering the questions posed for determination in the Case Stated in relation to the financial years 2000 and 2001, held that the respondent was correct in assessing the appellant the amounts credited to him by The Rarotongan of \$250,000 in each of those years but, in relation to the

2002 financial year, there being a disparity between \$187,500 and \$200,000 in the evidence, the Court directed the actual amount to be resolved by counsel or, failing agreement, to be resolved by submissions.

[2] In submissions dated 1 September 2012 (NZ time) Mr Ruffin, leading counsel for the respondent, reviewed the conflicting evidence on the topic, and said the respondent would be prepared to accept the sum of \$187,500 as the correct figure for the 2002 financial year.

[3] The appellant has not replied to Mr Ruffin's submissions but, in view of the respondent's concession, the Court assumes, for the purpose of calculation, that the appellant would accept the figure of \$187,500 as being the correct amount credited to him by The Rarotongan in the 2002 financial year. The Court says "for the purpose of calculation" as the appellant, Mr Crocombe, has appealed against the judgment of 3 August 2012 and therefore would no doubt not wish to be seen as conceding that the respondent was correct in any of the assessments under challenge in the appeal.

[4] By way of completion of the answers required to be given to the questions posed for determination in the Case Stated in this appeal, the Court therefore holds that the respondent was correct in assessing the appellant an amount credited to the appellant by The Rarotongan in 2002 in the sum of \$187,500 but, against the possibility the assumption concerning the appellant's attitude is incorrect, the Court reserves leave to the appellant to exercise, within 14 days of delivery of this judgment, the right to seek a variation in the amount of the Order just made.

COSTS

[5] In paragraph [139] of the reserved judgment delivered on 3 August 2012 the Court directed counsel to endeavour to agree issues of costs or to file submissions concerning the same; Mr Ruffin's submissions were dated 30 August 2012 (NZ time) and those from Messrs David and Hikaka for the appellant were dated 12 September 2012.

[6] Counsel agree that the practice which has developed in the Cook Islands in relation to costs is that the starting point for orders for costs should be two-thirds of the actual solicitor and client costs plus full disbursementsⁱ and that, the amount in issue in this Case Stated exceeding \$20,000, the scale figure of 7% for appearances at the hearing (plus the costs for steps preliminary to the hearing) was accordingly appropriate.

[7] In this case the solicitor and client costs paid by the respondent for the period 12 November 2008 – 3 July 2012 (after deduction of photocopying charges included in one invoice) was \$30,229.39 plus actual disbursements totalling \$3,160.22. Counsel for the appellant did not challenge the sums claimed either for costs or disbursements as being unreasonable or in any other way.

[8] 7% of the sums in issue in this Case Stated is \$48,125, but the respondent accepts that an allowance of two-thirds of that figure, \$20,152.93, would be unreasonable as it exceeds the sum actually charged. In this case no claim is made for indemnity costs.

[9] However, the respondent sought an uplift in the costs to be ordered from two-thirds to 85% plus disbursements because of additional discovery and the late raising by the appellant of the ground of improper conduct by the Collector in relation to Mr Crocombe's taxation affairs.

[10] Counsel for the appellant accepted that an appropriate order for costs would be \$23,313.14 being two-thirds of the legal fees charged, \$20,152.92, and reimbursement of the full disbursements, \$3,160.22 but contended there was nothing in this case to warrant an increase in the costs allowance above the customary two-thirds level, whether in relation to the amount of discovery, the late raising of the improper conduct issue or for any other reason.

[11] As far as the ground concerning the volume of discovery is concerned, the Courts view is that counsel for the appellant are correct. While this was an appeal involving a sizeable number of documents, that is a feature commonly found in tax cases, especially taxation appeals, and in this case the volume of discovery did not

appear untoward. It was certainly not a remarkable case in terms of the volume of documents.

[12] Something was made by Mr Ruffin of the necessity to bind the discovered documents, but this is a matter of good practice required by the rules and does not, of itself, justify an additional costs allowance.

[13] As far as the late raising of the improper conduct ground is concerned, the Court's view is that a modest uplift in the costs otherwise payable is justified in relation to that matter. It was raised at a late stage. It required the production of a number of additional documents. But, though it would have required a certain amount of additional evidence, preparation and submissions, those items would have been covered in the total amount charged by counsel for the appearance of the hearing. On that basis, the only aspect of the late raising of this ground of appeal which justifies an additional allowance of costs is the extra discovery and the Court allows \$750 for that.

[14] In light of that, the appellant is ordered to pay costs to the respondent in the sum of \$20,152.92 being two-thirds of the legal fees charged plus the sum of \$750 for additional discovery in relation to the late raising of the improper conduct ground plus recovery of the full amount of the respondent's disbursements, \$3,160.22. The total amount payable by the appellant to the respondent for costs and disbursements is accordingly the sum of \$24,063.15.



Hugh Williams, J
