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IN THE UNITED STATES TAX COURT

In the Matter of:)	
)	
PRESTON OLSEN & ELIZABETH OLSEN,)	Docket Nos. 26469-14,
ET AL.,)	21247-16
)	
Petitioners,)	
)	
v.)	
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent.)	Consolidated

Volume: 1

Pages: 1 through 153

Place: Provo, Utah

Date: January 21, 2020



1 or a four-line statement that we're engineers with
2 experience. It does not allow us to explore it,
3 pre-trial, to develop what that experience was, who they
4 are, and what they did.

5 Additionally, the report doesn't -- is factually
6 deficient on the experiments. We were unable to read the
7 report and determine -- or ascertain exactly what was
8 done, what records were kept, what was utilized in the
9 report to determine what they determined.

10 The third point, Your Honor, is they conducted a
11 test that has no relationship to the system that we're
12 arguing about. Nowhere was a Stirling engine discussed in
13 the years of the promotion, yet that's what they utilized.

14 The last point, Your Honor, is, at no point in
15 time has the Respondent ever contended that the lenses do
16 not produce heat in some fashion.

17 THE COURT: That's the point I want to get to.
18 It seems like they were -- that Respondent concedes the
19 point that they thought -- they demonstrated by their
20 experiment.

21 MR. SORENSEN: Concede is a strong word, Your
22 Honor. We have never contested that the lenses do not
23 produce some form of heat.

24 THE COURT: So Respondent does -- in your
25 Pre-Trial Memo, you said you agree that the lenses can be



1 used to produce enough heat that in some system --

2 MR. SORENSEN: Some system somewhere.

3 THE COURT: -- that could potentially produce
4 energy electricity, right, in some system?

5 MR. SORENSEN: Could produce electricity. That
6 doesn't mean that it could commercially produce --

7 THE COURT: Right.

8 MR. SORENSEN: -- electricity or that it could
9 utilize the system as Mr. Johnson envisioned it. That's
10 correct, Your Honor. Well, there's one point, and I
11 misspoke. We would like to have the witnesses excused
12 prior to where we are at this point, the witnesses who are
13 going to testify.

14 THE COURT: The fact witnesses?

15 MR. SORENSEN: The fact witnesses. And I meant
16 to do that prior to starting my argument. We'd like to
17 have those witnesses excluded from the courtroom.

18 THE COURT: During the Motions in Limine?

19 MR. SORENSEN: Yes. We're going to also address
20 another issue that involves on the fact witnesses that we
21 would like to have the Court cleared for.

22 THE COURT: Okay. Any objection?

23 MR. JONES: No.

24 THE COURT: Okay.

25 MR. JONES: No, I don't. I don't have any,



1 argument, Your Honor.

2 THE COURT: Okay.

3 MR. SORENSEN: It was something I had in my
4 notes.

5 But yes, the Court is correct in that we did
6 state that in our pre-trial memo. So we believe that with
7 that fact involved, that nothing that these experts will
8 testify to is relevant.

9 THE COURT: Um-hum. Because the experiment goes
10 to a point that's not in --

11 MR. SORENSEN: Not in dispute. And it's
12 envisioning and testing the system that's not in dispute,
13 not even part of the case.

14 THE COURT: And how about the two CPAs? I
15 understand you have conceded the penalty because you
16 didn't get requisite supervisor approval, as we had in our
17 latest ruling required.

18 MR. SORENSEN: Yes. We violated the claim
19 ruling, essentially. So we have conceded all additions to
20 tax in this case. Additionally, Your Honor --

21 THE COURT: And accuracy penalties, you mean?

22 MR. SORENSEN: Yes.

23 THE COURT: Yeah.

24 MR. SORENSEN: I'm sorry. Yes. Additionally,
25 Your Honor, the CPAs in this case, and we'll address them



1 MR. JONES: Okay.

2 THE COURT: So I think that's irrelevant.

3 Okay. Mr. Jones, would you like to address the
4 expert report point?

5 MR. JONES: Yeah, the expert report --

6 THE COURT: The thing that troubles me is --

7 MR. JONES: Sure.

8 THE COURT: -- primarily, it does seem to me
9 that it may not just be relevant. If Respondent agrees
10 that you can take these lenses, and they can be used to
11 generate enough heat through some system to power an
12 engine and produce electricity, if that's conceded, I
13 don't see what more they prove by their experiment than
14 that.

15 MR. JONES: If I can get that concession on the
16 record, I will agree. Yeah.

17 THE COURT: Well, I think they said they have an
18 agreement, but concession was too strong a word.

19 MR. JONES: Right.

20 MR. SORENSEN: We don't disagree, Your Honor,
21 that the lenses do produce heat, and that heat, in some
22 systems, can be then used to generate electricity. We do
23 not dispute that.

24 MR. SORENSEN: So is that -- the question,
25 though, is that a concession. So --



1 THE COURT: But let me read the relevant
2 sentence of the report. Find it. Okay. It's on page 11,
3 "Conclusion: It's clearly, by the most basic definitions,
4 electrical power. The Johnson Fresnel Lens System
5 produces enough solar process heat to run a Stirling
6 engine and produce electricity. Selecting a Stirling
7 engine size for this application and tuning the engine
8 generator will likely improve performance". Well, it --

9 MR. SORENSEN: Up until that last sentence, Your
10 Honor, I think we were okay.

11 THE COURT: How about system? I don't think you
12 agree there's a system.

13 MR. SORENSEN: No, we don't agree. We agree the
14 system that they tested and utilized was not the system --

15 MR. JONES: Not the system.

16 MR. SORENSEN: -- not the system that was
17 envisioned.

18 MR. JONES: And just if I could speak to that
19 specific point. So this case is not about the system that
20 International Automated Systems and RaPower3 developed and
21 promoted and sold and so forth, or -- what the taxpayer at
22 issue in this case purchased was the lens. And so its use
23 is what is at issue. It gets leased to an entity called
24 LTB. There is an understanding about what those lenses
25 were intended to do, once they were leased, that this



1 taxpayer has. And so the concern -- the overarching
2 concern that Petitioners have is, is that lens -- does it
3 qualify to solar energy property under the regs? Is it
4 energy property under the Code, by extension?

5 And so we are dealing with just the lens itself.
6 We believe that a reading of the regs qualifies it as
7 solar energy property because it can be used in a system
8 that will generate electricity.

9 THE COURT: Well, I think you're getting into
10 you --

11 MR. JONES: Sure.

12 THE COURT: -- opening argument now. But I'm
13 just trying to -- I mean, if we take the word "system"
14 out, if we just say that the conclusion of these engineers
15 was that, by the most basic definition electrical power,
16 the Johnson Fresnel Lens produces enough solar process
17 heat to run an engine and produce electricity. If
18 Respondent would agree with that, right --

19 MR. SORENSEN: As long as there's not a
20 commercial --

21 THE COURT: Right. Right.

22 MR. SORENSEN: -- determination.

23 THE COURT: Right.

24 MR. SORENSEN: That the lenses do produce
25 sufficient heat, that the Stirling engine did produce some



1 electricity, we have no problem with that.

2 THE COURT: I think you've got the concession
3 that --

4 MR. JONES: Okay.

5 THE COURT: -- you want. So on that basis, I
6 will exclude this report as not relative to any point in
7 dispute.

8 MR. JONES: With that concession being part of
9 the ruling?

10 THE COURT: Right. Right.

11 MR. JONES: Thank you.

12 MR. SORENSEN: Your Honor, there is one other
13 housekeeping matter to be brought up, a delicate matter.
14 Petitioners intend to call Neldon Johnson as a witness.
15 And the Respondent would like some clarification on two
16 points related to that. The first is, we're concerned
17 about a conflict of interest that we want to establish on
18 the record so that we don't have a collateral attack
19 sometime down the road. In that I mean, Mr. Johnson hired
20 Mr. Jones as an attorney some years ago, related to the
21 transaction. We're not sure whether Mr. Jones still has
22 some relationship capacity as an attorney for the witness
23 versus his capacity to the Petitioners. We're also aware
24 that the District Court, in their finding, found that Mr.
25 Johnson was paying Mr. Jones' fees for this litigation.



1 were changed after the initial contracts were signed. And
2 so the owners of the plants, which were typically pension
3 funds and other consortia -- I'm sorry. Am I --

4 Q I'm actually going to stop you, if that's okay.

5 A Okay. No, that's --

6 Q I'm more interested in where you derive your --
7 why you would hold yourself out as an expert to be able to
8 say, this is a commercial-grade application.

9 THE COURT: Well, could I ask a question about
10 that. It seems to me, commercial grade can be a lot of
11 different things. On the one hand, an invention that has
12 gone through all four stages of development and really
13 works and is ready to be sold, you might say is
14 commercial. When it's going to be highly profitable given
15 the market and the competing products and the tariffs and
16 the taxes, that's whole different question, right?

17 THE WITNESS: And that's why I said, I'm not
18 aware of a good definition of commercial grade, what that
19 means. And that's why I'm trying to qualify it a little
20 bit here. But the work I did in those cases was technical
21 work. It was not related to that.

22 Certainly, commercial grade has a lot to do with
23 profitability and whether you can sell it in the open
24 market. And you might try, and it doesn't work. And you
25 don't make it.



1 Q Okay.

2 A But you would never stick your hand into the
3 beam itself because your hand then would absorb --

4 Q Oh, I see.

5 A -- and convert --

6 Q I understand now what you're saying.

7 A -- convert that energy --

8 Q Yeah.

9 A -- into heat and cook you.

10 Q You would burn yourself, in other words.

11 A You'd burn yourself.

12 Q Okay. I'm sorry. I was --

13 A Yeah, I --

14 Q -- lost in translation. I'm sorry.

15 A I'm probably gaming semantics games here, and
16 I'll try not to do that.

17 Q That's okay. Okay. So again, it sounds like we
18 don't have a disagreement with the ring. The ring with
19 the lenses on it comes to a focal point where there is
20 heat absorption. And so from that point, do you believe
21 that it's possible to implement any number of different
22 systems that might generate or that would generate
23 electricity?

24 A Yes. I mean, I think the discussion yesterday
25 about maybe putting photocells at that location or



1 something like that, although there are other issues and
2 so forth. Yes. The answer to that is yes.

3 Q Okay. Great. And so the statement about -- and
4 I think -- I don't want to jump ahead either, but the --
5 we're all kind of agreeing that these lenses can be used
6 in a system. And I think you take exception to it being
7 this system -- but in a system to generate electricity;
8 that's a fair statement?

9 A You could potentially. Whether that would be a
10 commercial system -- it wasn't the -- my discussion has
11 been focused on the system that was proposed.

12 Q I understand.

13 A Okay.

14 Q And specifically I should say, you looked at a
15 specific set of assumptions and variables that were
16 provided to you. Were you also provided other materials?
17 Like, I have an engineering drawing that has the solar
18 towers connected to just one turbine. Did you --

19 A That was the system that I was modeling.

20 Q Okay. Isn't your -- we can look at your report
21 real quick. It's on page -- I apologize. Let me look to
22 it.

23 A 16? I'm guessing.

24 Q Yeah, you're right. Thank you. Page 16. So
25 this has a diagram where there are multiple towers

1 THE WITNESS: I think Mr. Johnson would tell you
2 that he produced it, and there are sections in it that he
3 did not produce but he admits that other technical experts
4 did produce, but he won't identify --

5 THE COURT: Okay. What I'm trying to get at is
6 whether this was your --

7 THE WITNESS: No, it's not my drawing.

8 THE COURT: -- attempt to model what was
9 going --

10 THE WITNESS: This is his.

11 THE COURT: This is -- okay. Got it.

12 THE WITNESS: And this is a system that I tried
13 to use --

14 THE COURT: I understand.

15 THE WITNESS: -- to build the model.

16 THE COURT: Right.

17 BY MR. JONES:

18 Q And we heard testimony yesterday from Randy
19 Johnson, for example, where they had also intended just to
20 use one tower alone. And so you're -- I just want to make
21 sure I'm being clear. You're saying there's no reason why
22 that couldn't be done. You could use this one tower or --

23 A That's correct. They could use just one tower
24 and the power cycle there, yes.

25 Q Okay. Great. Did you perform any tests on your



1 Q Okay.

2 A But to say that it doesn't need to be done
3 simply isn't correct.

4 Q Yeah. So you testified in direct when Mr.
5 Bradbury was asking you that you think it probably could
6 be a viable system. And I got specific points here, but I
7 think in your direct you said this so we can save some
8 time here, but you kind of made the overarching statement
9 that, yeah, get better personnel, I guess wash the lenses.
10 I think you have an issue about sandblasting the towers
11 and painting them, things like that. But get all this in
12 place. You think the technology could probably work to
13 generate electricity in five years, you said. Is that --

14 A Oh, I don't know. I don't know five years. But
15 I think if you got the right team on it, and you really
16 invested the money in it, you could probably make
17 something that would generate electricity using the
18 concept as it stands.

19 Now, could it -- what it compete in commercial
20 marketplace was really the issue I was going after, and I
21 don't think it would.

22 Q And is that entirely cost-driven?

23 A Without having gone through the process, I can't
24 say for 100-percent sure that it could be made to work.
25 But I'm relatively confident that if you put people who



1 Q -- test? Mr. Gardner also testified about one
2 tower being erected with four arrays full of complete
3 lenses. Do you remember that testimony?

4 A I do.

5 Q When you visited in January of 2017, what was
6 the condition of the towers?

7 A There wasn't any with complete complementive
8 facets. The towers -- in fact, there was a little bit of
9 difference between the two visits, but only one of them
10 was tracking at the time. And it had -- it would only
11 track during the first visit, and as -- it would not track
12 in the elevation mode.

13 And they showed me that, and it wasn't tracking
14 automatically; it was being done manually. During that
15 first visit at the manufacturing facility, Randale Johnson
16 had showed me his tracking -- he was developing the
17 tracking program, and he explained how it was going to
18 work.

19 And I think during the second visit, I think
20 they were tracking it automatically, but I don't know
21 that. But Randale was operating it, so I assume that that
22 same dish was tracking in both elevation and azimuth. But
23 it was not fully populated with lenses at that point
24 either.

25 Q Thank you.

