

Federal Court



Cour fédérale

Date: 20240722

Docket: T-173-23

Citation: 2024 FC 1145

Ottawa, Ontario, July 22, 2024

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

RANDY WILLIAMS

Applicant

and

**MUSIC AND ENTERTAINMENT RIGHTS
LICENSING INDEPENDENT NETWORK
LTD., CD BABY, and JIOSAAVN**

Respondents

ORDER AND REASONS

[1] By Judgment and Reasons dated June 6, 2024, in *Williams v Music and Entertainment Rights Licensing Independent Network Ltd*, 2024 FC 861 [Judgment], I found that the Respondents did not infringe Mr. Williams' copyright under the *Copyright Act*, RSC 1985, c C-42, and accordingly dismissed the application in its entirety. I awarded the Respondents their costs, in an amount to be determined following receipt of their written costs submissions. These submissions and their accompanying material are now before the Court.

[2] The Respondents seek an order for \$96,197.55 in costs, inclusive of disbursements and taxes. This represents an elevated award of costs calculated at the top end of Column V of Tariff B, with a double rate with respect to steps in the proceeding that took place after their written settlement offer on July 17, 2023, under Rule 420 of the *Federal Courts Rules*, SOR/98-106 [Rules].

[3] Mr. Williams' costs submissions read more as his submissions on appeal of the Judgment. He makes no explicit submissions as to the Respondent's costs, except to state that, “[i]t would be an injustice for this court to reward such Respondent conduct with an award of costs as requested by the Respondents,” and that “it was Respondents' conduct that caused this litigation and its associated costs.”

[4] Costs determinations lie within the discretion of the trial judge under Rule 400(1) of the Rules. The Court weighs many factors in exercising this discretion as outlined under Rule 400(3) of the Rules:

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| (3) In exercising its discretion under subsection (1), the Court may consider | (3) Dans l'exercice de son pouvoir discrétionnaire en application du paragraphe (1), la Cour peut tenir compte de l'un ou l'autre des facteurs suivants : |
| (a) the result of the proceeding; | a) le résultat de l'instance; |
| (b) the amounts claimed and the amounts recovered; | b) les sommes réclamées et les sommes recouvrées; |
| (c) the importance and complexity of the issues; | c) l'importance et la complexité des questions en litige; |

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| <p>(d) the apportionment of liability;</p> | <p>d) le partage de la responsabilité;</p> |
| <p>(e) any written offer to settle;</p> | <p>e) toute offre écrite de règlement;</p> |
| <p>(f) any offer to contribute made under rule 421;</p> | <p>f) toute offre de contribution faite en vertu de la règle 421;</p> |
| <p>(g) the amount of work;</p> | <p>g) la charge de travail;</p> |
| <p>(h) whether the public interest in having the proceeding litigated justifies a particular award of costs;</p> | <p>h) le fait que l'intérêt public dans la résolution judiciaire de l'instance justifie une adjudication particulière des dépens;</p> |
| <p>(i) any conduct of a party that tended to shorten or unnecessarily lengthen the duration of the proceeding;</p> | <p>i) la conduite d'une partie qui a eu pour effet d'abrégé ou de prolonger inutilement la durée de l'instance;</p> |
| <p>(j) the failure by a party to admit anything that should have been admitted or to serve a request to admit;</p> | <p>j) le défaut de la part d'une partie de signifier une demande visée à la règle 255 ou de reconnaître ce qui aurait dû être admis;</p> |
| <p>(k) whether any step in the proceeding was</p> | <p>k) la question de savoir si une mesure prise au cours de l'instance, selon le cas :</p> |
| <p>(i) improper, vexatious or unnecessary, or</p> | <p>(i) était inappropriée, vexatoire ou inutile,</p> |
| <p>(ii) taken through negligence, mistake or excessive caution;</p> | <p>(ii) a été entreprise de manière négligente, par erreur ou avec trop de circonspection;</p> |
| <p>(l) whether more than one set of costs should be allowed, where two or more parties were represented by different solicitors or were represented by the same</p> | <p>l) la question de savoir si plus d'un mémoire de dépens devrait être accordé lorsque deux ou plusieurs parties sont représentées par différents avocats ou lorsque, étant représentées</p> |

solicitor but separated their defence unnecessarily;

par le même avocat, elles ont scindé inutilement leur défense;

(m) whether two or more parties, represented by the same solicitor, initiated separate proceedings unnecessarily;

m) la question de savoir si deux ou plusieurs parties représentées par le même avocat ont engagé inutilement des instances distinctes;

(n) whether a party who was successful in an action exaggerated a claim, including a counterclaim or third party claim, to avoid the operation of rules 292 to 299;

n) la question de savoir si la partie qui a eu gain de cause dans une action a exagéré le montant de sa réclamation, notamment celle indiquée dans la demande reconventionnelle ou la mise en cause, pour éviter l'application des règles 292 à 299;

(n.1) whether the expense required to have an expert witness give evidence was justified given

n.1) la question de savoir si les dépenses engagées pour la déposition d'un témoin expert étaient justifiées compte tenu de l'un ou l'autre des facteurs suivants :

(i) the nature of the litigation, its public significance and any need to clarify the law,

(i) la nature du litige, son importance pour le public et la nécessité de clarifier le droit,

(ii) the number, complexity or technical nature of the issues in dispute, or

(ii) le nombre, la complexité ou la nature technique des questions en litige,

(iii) the amount in dispute in the proceeding; and

(iii) la somme en litige;

(o) any other matter that it considers relevant.

o) toute autre question qu'elle juge pertinente.

[5] As the Respondents provide, many of these factors weigh in their favour: they were successful in defending the application, the amount of work and the complexity of the issues presented by Mr. Williams was high, Mr. Williams repeatedly engaged in unnecessary conduct which prolonged the litigation between the parties, and, most importantly, Mr. Williams ignored or otherwise rejected the Respondents' reasonable offer to settle.

[6] On July 17, 2023, the Respondents presented Mr. Williams with a written offer to settle for \$1,500 if he accepted before the early neutral evaluation held on July 19, 2023, or \$500 if accepted thereafter. They attempted to reach a settlement with Mr. Williams again on October 10, 2023. In response, Mr. Williams demanded payments of \$4.66 million CAD and \$29.125 million USD, and later made a second counteroffer of \$350,000 CAD on November 7, 2023.

[7] I agree with the Respondents that their offer to settle was reasonable, and Mr. Williams' rejection of it, in addition to other steps he took to prolong or extend the litigation, warrant granting an award of elevated costs.

[8] I acknowledge that Mr. Williams is self-represented. I further acknowledge that elevated costs awards are typically granted in situations involving "sophisticated, commercial parties:" *Drainvac International 2006 Inc (Drainvac Central Vacuums) v Vacuum Specialists (1985) Ltd*, 2024 FC 280 [*Drainvac*] at para 48, citing *Sport Maska Inc v Bauer Hockey Ltd*, 2019 FCA 204 at paras 51-52. Notwithstanding, I agree with the Respondents that Mr. Williams has presented himself as a knowledgeable and experienced litigant, with a full understanding of the

cost consequences of litigation. Further, this is a situation where the underlying case is “totally devoid of merit.” *Drainvac* at para 48.

[9] For these reasons, I accept that the Respondents’ proposal for an elevated costs award is appropriate.

ORDER in T-173-23

THIS COURT ORDERS that the Respondents are awarded their costs in this matter as against Randy Williams pursuant to the Judgment in the amount of \$96,197.55, inclusive of disbursements and taxes.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-173-23

STYLE OF CAUSE: RANDY WILLIAMS v MUSIC AND
ENTERTAINMENT RIGHTS LICENSING
INDEPENDENT NETWORK LTD., CD BABY, AND
JIOSAAVN

**COSTS SUBMISSIONS IN WRITING CONSIDERED AT OTTAWA, ONTARIO,
PURSUANT TO RULE 400(4) OF THE *FEDERAL COURTS RULES***

ORDER AND REASONS: ZINN J.

DATED: JULY 22, 2024

WRITTEN SUBMISSIONS BY:

Randy Williams

FOR THE APPLICANT
(ON HIS OWN BEHALF)

Eric Mayzel
Steven Henderson

FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Cassels Brock & Blackwell LLP
Barristers and Solicitors
Toronto, Ontario

FOR THE RESPONDENTS