

Federal Court



Cour fédérale

Date: 20110406

Docket: T-233-10

Citation: 2011 FC 424

BETWEEN:

LE MASSIF INC.

Appellant

and

**STATION TOURISTIQUE MASSIF DU SUD
(1993) INC.**

Respondent

[ENGLISH TRANSLATION]

REASONS FOR ASSESSMENT OF COSTS

ASSESSMENT OFFICER JOHANNE PARENT

[1] On February 2, 2011, the Court allowed the appeal filed under subsection 56(1) of the *Trade-marks Act*, with costs. In its letter to submit the bill of costs for assessment, the appellant requested that the assessment be conducted on the basis of the affidavit and supporting evidence submitted. Attached to that letter was a letter from counsel for the respondent, stating that the bill of costs as presented is not disputed but nevertheless requesting that it be assessed. In light of the above, I will assess the bill of costs as filed in the Court record on March 29, 2011.

[2] In *Dahl v. Canada*, 2007 FC 192 (OT), at paragraph 2, my colleague stated:

Effectively, the absence of any relevant representations by the Plaintiff, which could assist me in identifying issues and making a decision, leaves the bill of costs unopposed. My view, often expressed in comparable circumstances, is that the *Federal Courts Rules* do not contemplate a litigant benefiting by an assessment officer stepping away from a position of neutrality to act as the litigant's advocate in challenging given items in a bill of costs. However, the assessment officer cannot certify unlawful items, i.e. those outside the authority of the judgment and the Tariff.

[3] With respect for the preceding, I will therefore consider the legitimacy of the services claimed under Tariff B of the *Federal Courts Rules* in the appellant's bill of costs. The units claimed for preparation and filing of the application record (item 1); preparation for an examination on affidavit (item 8); attending on the examination (item 9); preparation for the hearing (item 13(a)); attendance in Court (item 14(a)); and assessment of costs (item 26) are allowed as claimed.

[4] Under item 4, the appellant is claiming the preparation of two uncontested motions. A review of the Court orders in response to those motions shows that costs were not awarded to any party. As provided in Rule 400(1) of the *Federal Courts Rules*, only the Court "shall have full discretionary power over the amount and allocation of costs and the determination of by whom they are to be paid." Consequently, the assessment officer does not have the required jurisdiction to allocate costs. Having been unable to find any decision awarding costs for these motions in the Court record, and based on the decision of the Honourable Justice Hughes in *Janssen-Ortho Inc. v. Novopharm Ltd.*, 2006 FC 1333, where it was determined that "[a]ny pre-trial Order that is silent as to costs means that no costs have been awarded to any party", the costs claimed under item 4 will not be allowed.

[5] The disbursements claimed in the appellant's bill of costs are not disputed and are considered necessary and reasonable charges to the conduct of this matter. With the exception of the disbursements associated with the motions for which costs were not awarded (photocopies \$12 + \$99 and service \$91.65), all other amounts will therefore be allowed as claimed.

[6] The appellant's bill of costs is allowed in the amount of \$5,637.47.

“Johanne Parent”
Assessment Officer

Toronto, Ontario
April 6, 2011

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-233-10

STYLE OF CAUSE: LE MASSIF INC. v. STATION TOURISTIQUE
MASSIF DU SUD INC.

**ASSESSMENT OF COSTS IN WRITING WITHOUT PERSONAL APPEARANCE OF
THE PARTIES**

REASONS FOR ASSESSMENT BY: ASSESSMENT OFFICER
JOHANNE PARENT

DATE OF ASSESSMENT: April 6, 2011

WRITTEN REPRESENTATIONS:

Jacques Blanchard FOR THE APPELLANT

Simon Lemay FOR THE RESPONDENT

SOLICITORS OF RECORD:

Stein Monast L.L.P. FOR THE APPELLANT
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