

Date: 20090923

Docket: A-392-08

Citation: 2009 FCA 272

BETWEEN:

RUSSELL WITT

Appellant

and

HER MAJESTY THE QUEEN

Respondent

ASSESSMENT OF COSTS - REASONS

Johanne Parent
Assessment Officer

[1] On April 23, 2009, on consent of the respondent, the Court allowed the appeal of this matter with costs. A timetable for written disposition of the assessment of the appellant's Bill of Costs was issued on July 17, 2009 and sent to both parties. Neither counsel for the appellant nor the respondent filed representations within the prescribed timeframe, nor was any request to extend the time to file said submissions received. The assessment of the appellant's Bill of Costs will proceed considering that "the assessment officer cannot certify unlawful items, i.e. those outside the authority of the judgment and the Tariff" (*Dahl v. Canada*, 2007 FC 192, [2007] F.C.J. No. 256).

[2] Despite the fact that the Bill of Costs mentions that it was prepared in accordance with Tariff B of the *Federal Courts Rules*, in most instances, the appellant claimed the number of hours spent by counsel (first and second), students-at-law and law clerks for each service rendered without reference to the number of units. Considering the wording of Rule 407 of the *Federal Courts Rules* which reads: "Unless the Court orders otherwise, party-and-party costs shall be assessed in accordance with column III of the Table of Tariff B", I have tried to convert the number of hours claimed to unit values to reflect Tariff B.

[3] Furthermore, all through the Bill of Costs, services are claimed for second counsel, students-at-law and law clerks. In the assessable services covered by Tariff B sub-section F - Appeals to the Federal Court of Appeal, only Item 22 provides for second counsel and in this case, as before the Federal Court, the counsel fee claimed for second counsel is only assessable if specifically directed by the Court. I could not find in the Court file any orders or directions from the Court that authorized second counsel and therefore, I have not considered any of the amounts claimed for second counsel.

[4] Work time allocations are claimed for students-at-law and law clerks throughout the appellant's Bill of Costs without further proof of services rendered. Item 28 of Tariff B covers services rendered by students-at-law and law clerks. In *Tuquabo v. Canada*, 2009 FCA 126, at paragraph 10, it was held that:

Item 28 provides for "services in a province by students-at-law, law clerks or paralegals that are of a nature that the law society of that province authorizes them to render". The Respondents have submitted a claim for the services of a paralegal. They have not,

however, provided any evidence concerning the services rendered by the paralegal. Having reviewed the written submissions of the Respondents and the affidavit of Madeline MacLellan, I can find no reference to paralegal services. Further, there is no indication that the fee relates to services that are of the nature that the law society of the province authorizes paralegals to render. Having regard to the above, the Respondents' claim under Item 28 cannot be allowed.

As there is no evidence that the services claimed were “of a nature that the law society ... authorizes them to render”, I have not taken into consideration the amounts claimed for such services.

[5] The services claimed for the preparation and filing of the Notice of Appeal (Item 17) and for the requisition for hearing (Item 20) are allowed as claimed.

[6] Under Item 18, six hours were claimed for the preparation of the Appeal Book. Tariff B only provides for one unit for such service and one unit will for that reason, be allowed.

[7] The main counsel on the file claims 3.9 hours for the preparation of the memorandum of fact and law. Four units will be allowed for that service.

[8] Counsel further claims time under Item 21 for the preparation and filing of two motions. These claims will be denied since the Court's orders of September 24, 2008 and April 2, 2009, are silent as to costs. In *Janssen-Ortho Inc. v. Novopharm Ltd.*, 2006 FC 1333, [2006] F.C.J. No. 1684, the Court determined that, “Any pre-trial Order that is silent as to costs means that no costs have been awarded to any party”.

[9] Item 22 (Counsel fee on hearing of appeal) is allowed as presented, three units multiplied by the hours in Court.

[10] In the Bill of Costs, one unit is claimed under Item 26 (Assessment of costs). This was certainly an oversight on the part of appellant's counsel since the minimum number of units under this Item is two. I allow the minimum unit value for such service.

[11] With regard to the disbursements claimed, they are not contested and I consider them charges necessary to the conduct of this matter. The total claimed was revised to properly reflect the charges specified in the Bill of Costs. The amount claimed is therefore allowed at \$2,138.61.

[12] The appellant's Bill of Costs is allowed for a total amount of \$4,088.61.

"Johanne Parent"
Assessment Officer

Toronto, Ontario
September 23, 2009

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-392-08

STYLE OF CAUSE: RUSSELL WITT v. HER MAJESTY THE QUEEN

ASSESSMENT OF COSTS IN WRITING WITHOUT PERSONAL APPEARANCE OF THE PARTIES

PLACE OF ASSESSMENT: TORONTO, ONTARIO

REASONS FOR ASSESSMENT OF COSTS: JOHANNE PARENT

DATED: SEPTEMBER 23, 2009

WRITTEN REPRESENTATIONS:

N/A FOR THE APPELLANT

N/A FOR THE RESPONDENT

SOLICITORS OF RECORD:

Rotfleisch & Samulovitch FOR THE APPELLANT
Toronto ON

John H. Sims, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada