Federal Court  Cour fédérale

Date: 20140703

Docket: T-10-13

Citation: 2014 FC 653

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Plaintiff/Defendant by Counterclaim

and

HOUCHAINE, BOUTROS NAIM;
EL-SKAYER, JACQUELINE MOUSA;
HOCHAIME, LYNN BOUTROS;
HOCHAIME, JENNIFER BOUTROS

Defendants/Plaintiffs by Counterclaim

REASONS FOR ASSESSMENT OF COSTS

JOHANNE PARENT, Assessment Officer

[1] On January 3, 2013, a Statement of Claim was filed under the *Citizenship Act*. By Reasons for Judgment and Judgment dated April 9, 2014, the Court declared that each of the Defendants obtained their Canadian citizenship by false representation or fraud or by knowingly concealing material circumstances within the meaning of paragraph 18(1)(b) of the *Citizenship Act*, dismissed the Defendants' counterclaim and awarded costs to the Plaintiff on a solicitor and client basis.

[2] Further to the filing of the Plaintiff's Bill of Costs on May 1, 2014, a Notice of Appointment was issued and the hearing of the assessment took place in Toronto, Ontario on June 16, 2014. Counsels for the Plaintiff and the Defendants presented arguments.

[3] In the Affidavit of Karen M. Mendonça filed in support of the Bill of Costs, it is asserted that the Bill of Costs was prepared further to the review of the various litigation steps taken in this proceeding as well as the "Division's time keeping report which sets out the dates, timekeeper name, task description, hours and dollar amount charged to the client". In light of the various consultations with their client prior to the commencement of the revocation proceeding, it is further affirmed that the total amount for counsel fees was reduced from $66,424.88 to $61,565.00 to remove any time spent prior to the institution of the proceeding. At paragraph 6 of the Affidavit, it is further asserted that the billing rates of the main counsel for the Plaintiff and the junior counsel involved differ as the main counsel was called to the Bar in 1985 and the junior counsels, in 2008 and 2010. In the Written Representations of the Plaintiff, it is stated that "the costs set out in the Bill of Costs are fair and modest and properly reflect the complexity of the various litigation proceedings that took place and the factors set out under Rule 400(3) of the *Federal Courts Rules*".

[4] At the hearing, counsel for the Defendants contended that the Bill of Costs was unreasonable and that it was difficult to rationalize the counsel fees claimed considering that the hourly rate and the number of hours worked for each service claimed had not been disclosed and that insufficient details had been provided to justify the reasonableness of the fees claimed. Counsel for the Defendants then proceeded to ask counsel for the Plaintiff what each service claimed comprised. Counsel for the Defendants added no further comments, remarks or arguments to

counter the Plaintiff's counsel responses. It was lastly argued that in consideration of the general principles of proportionality, the amount claimed was excessive for three appearances before the Court. Counsel further added that the Defendants did not dispute the disbursements claimed by the Plaintiff in the Bill of Costs.

[5] In response, counsel for the Plaintiff argued that the hourly rate charged was protected by solicitor-client privilege and was based on the work of a senior counsel called to the Bar in 1985 and two junior counsels. It was further contended that the amounts claimed for each service were reasonable in consideration of the complexity of the issues raised and the amount of work required. To substantiate her allegations and in response to the enquiries from the Defendants' counsel with regard to the extent of the services provided, counsel for the Plaintiff contended that this matter required substantial preparation, more specifically for the issues regarding the disclosure of all the required information inclusive of privileged documents, as well as the concerns raised by the presence of an immigration consultant in the files along with the discussions and the required preparation to respond to the Defendants' Motion for an Order for the production of any documents in the possession of this consultant, the Charter arguments with respect to the counterclaim, and the required affidavits, some done last minute, to explain among other things the travel history reports of each of the Defendants and the production of their telephone records. Lastly, it was argued that some fees could have been avoided had the Defendants' counsel work with the Plaintiff's counsel and the Court, and that the costs of this matter would have been much higher had this matter proceeded to trial. Considering the Supplementary Bill of Costs submitted by the Plaintiff regarding the assessment of costs, Plaintiff's counsel asserts that is only claimed the amount of $701.30 in service for the preparation of the Bill of Costs and affidavit, plus $84.75 and $31.08 in disbursements as per receipts attached to the Bill of Costs. The fees attributed to the appearance at

the assessment, plus disbursements are not claimed. Plaintiff's counsel finally requested post-judgment interests.

[6] In the Law of Costs (2nd edition, Volume 1, 44th rel. 2014 at par 201), Orkin points out that:

> Partial indemnification is intended by the usual award of party-and-party costs, sometimes called the Tariff scale. An award of party-and-party costs as between solicitor and client or on a solicitor-and-client basis is intended to be full indemnification to the beneficiary of such an award, excluding, however, costs not reasonably necessary to the full and fair prosecution or defence of the action.

[7] Dealing with an assessment of costs awarded by the Court on a solicitor and client basis, the assessment officer in *Lominadze v. Canada* [1998] F.C.J. No. 958 stated:

> 8. Quantification of costs using an hourly rate may serve to be more helpful in one case than in another, or even for one service as opposed to another, but any solicitor-client assessment which relies exclusively on that factor is bereft, in my view, of fairness and reasonableness in the process of determining the extent to which the losing party should indemnify the winning party for the work it was required to perform. In Re Solicitors [1967] 1 O.R. 137 (H.C.J.), at p.142, Jessup J. wrote:
>
> - The taxation of a bill of costs, as between solicitor and client payable by an opposite party, should proceed on the principle that it is intended, so far as is consistent with fairness to the opposite party, to provide complete indemnity to the client as to costs essential to, and arising within the four corners of litigation…
>
> 9. That principle was confirmed in this Court by the late Mr. Justice Cattanach in *Scott Paper Co. v. Minnesota Mining and Manufacturing Co.*, 70 C.P.R. (2nd) 68 at 71 and later again in *Apotex v. Egis Pharmaceuticals* (1991), 4 O.R. (3d) 321, 37 C.P.R. (3d) 335 (Gen. Div.) was restated as:
>
> - The general principle that guides the court in fixing costs as between parties on the solicitor

> and client scale ... is that the solicitor and client scale is intended to be complete indemnification for all costs (fees and disbursements) reasonably incurred in the course of prosecuting or defending the action of proceeding, but is not, in the absence of a special order, to include the costs of extra services judged not to be reasonably necessary.

[8] I take from the Courts decisions previously cited that solicitor and client costs aim to indemnify the party awarded costs of all reasonable and necessary costs incurred in the process of arguing the proceeding with the exception of any costs specifically covered by a Court order or costs that would not be reasonably necessary.

[9] Concerning the principles of proportionality, counsel for the Defendants only submission was that the amount claimed was excessive for three appearances before the Court. While parties have made no specific arguments on the subject, it is noted that there is no mention of the principles of proportionality in the *Federal Courts Rules* as they now stand. Alternatively, in reaching my decision, I will refer to Rule 409 and will be considering Rule 400(3)(c) the importance and complexity of the issues and (g) the amount of work. The Court in awarding costs to the Plaintiff on a solicitor-and-client basis had absolute discretion by reason of Rule 400(1) of the *Federal Courts Rules*. In considering the Federal Courts jurisprudence on solicitor-clients costs (previously cited), I believe that the only manner that the assessment officer can reduce the costs claimed by the Plaintiff in this process is by being satisfied that the fees were not necessary or engaged unreasonably.

[10] The Defendants' main argument resides in the difficulty to assess the reasonableness of each claim caused by the Plaintiff's non-divulgation of the number of hours worked and the counsels' hourly rates. In response, Plaintiff's counsel argued that such were covered by the solicitor-client privilege.

[11] As was held in *Dahl v Canada*, 2007 FC 192 at paragraph 2, 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". Considering that I was not provided with any additional arguments on the solicitor-client privilege or any other evidence or comparable regarding the usual number of hours generally required to deal with the services usually put forward in this type of proceeding or any comparable regarding the hourly rates for lawyers with a similar standing with the Bar and that the only evidence before me is the Affidavit in support of the Bill of Costs for which the affiant had not been cross-examined, I find that there is no requirement to address the issue of solicitor-client privilege.

[12] Solicitor-client costs are not a licence to run up unnecessary costs but a manner for the successful party to claim full indemnification for the reasonable and necessary fees paid to its counsel for legal services in the conduct of the litigation. Considering the evidence and arguments before me as well as the complexities of the proceedings engaged, I am convinced that the costs incurred in the course of this litigation were necessary to advance the proceeding and done to reasonably ensure its success. As such, I consider that counsel for the Plaintiff through the unchallenged Affidavit in support of the Bill of Costs and arguments met the requirements to show the work performed in this matter by providing a description of the legal work done and the actual fees charged to the client for the work and service provided, that involved four different Defendants,

numerous affidavits, a case management conference, motions, etc. I read further from the file and through the Plaintiff's arguments that different measures were taken by the Plaintiff's counsel to streamline the process and of some other actions taken by the Defendants' counsel that forced the Plaintiff to take or respond to proceedings that caused costs to escalate, namely for the case management conference, the communications regarding the Defendants' consultant and the counterclaim. In a certain manner, the Defendants are responsible for the amount of time consumed on this proceeding. From my understanding of the Bill of Costs and the Plaintiff's arguments, counsel did not over-resource the case, taking advantage of junior counsels and paralegals to prepare materials when possible. With regards to the actual hourly rate, again, no evidence was put before me to compare the work performed by Plaintiff's counsel with other counsels' work in similar situations and further, no attempt was made to compare hourly rates. Although, it is well recognized that assessment of costs is not an exact science, I do not consider it either a guessing game and with no evidence to the contrary, I will take the hourly rate charged by the main and junior counsels as generally put in the Affidavit of Mendoça as reasonable.

[13] Having not been provided with evidence or arguments to support the position that the fees claimed by the Plaintiff in this process were unnecessary and not engaged reasonably, the Bill of Costs presented by the Plaintiff is allowed as claimed for a total amount of $62,625.35 and the second Bill of Costs regarding the assessment itself is allowed at $817.13, for a total of $63,442.48 with post-judgment interests as per Section 37 of the *Federal Courts Act*. A Certificate of Costs will be issued.

"Johanne Parent"

Assessment Officer

Toronto, Ontario
July 3, 2014

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-10-13
STYLE OF CAUSE:	THE MINISTER OF CITIZENSHIP AND IMMIGRATION v HOUCHAINE, BOUTROS NAIM;, EL-SKAYER, JACQUELINE MOUSA; HOCHAIME, LYNN BOUTROS; HOCHAIME, JENNIFER BOUTROS

ASSESSMENT OF COSTS DEALT WITH IN WRITING

REASONS FOR ASSESSMENT OF COSTS:	JOHANNE PARENT
DATED:	JULY 3, 2014

REPRESENTATIONS:

Kristina Dragaitis	FOR THE PLAINTIFF/DEFENDANT BY COUNTERCLAIM
Robert A. Rastorp	FOR THE DEFENDANTS/PLAINTIFFS BY COUNTERCLAIM

SOLICITORS OF RECORD:

William F. Pentney Deputy Attorney General of Canada	FOR THE PLAINTIFF/DEFENDANT BY COUNTERCLAIM
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