

**Date: 20071003**

**Docket: A-227-05**

**Citation: 2007 FCA 316**

**CORAM: NADON J.A.  
SEXTON J.A.  
SHARLOW J.A.**

**BETWEEN:**

**ANDREW CZARNOGORSKI**

**Appellant**

**and**

**SOCIETY OF COMPOSERS, AUTHORS AND  
MUSIC PUBLISHERS OF CANADA**

**Respondent**

Heard at Toronto, Ontario, on October 3, 2007.

Judgment delivered from the Bench at Toronto, on October 3, 2007.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**SEXTON J.A.**

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**ANDREW CZARNOGORSKI**

**Appellant**

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**REASONS FOR JUDGMENT OF THE COURT**

(Delivered from the Bench at Toronto, Ontario, on October 3, 2007)

**SEXTON J.A.**

[1] We are not persuaded that the Trial Judge erred in his award of costs. The issue relating to the offer to settle was not brought to his attention prior to judgment nor did counsel for the Appellant ask the Trial Judge to reserve his decision on costs until after a determination of liability had been made, in order to allow for representations to be made on the subject of costs, after the main findings of the Trial Judge were known.

[2] The order of the Trial Judge providing for no costs was not unreasonable having regard to the fact that (a) the Respondent was successful against the corporate defendant but unsuccessful against the Appellant, and that (b) both the corporate defendant and the Appellant were represented by the same counsel and (c) both defendants denied liability for the infringement thus putting the Respondent in the position of having to prove the infringement. It is also significant that the Appellant was the president of the corporate defendant and at all material times was the operator and manager of the business of the corporate defendant.

[3] The appeal should therefore be dismissed with costs.

“J. Edgar Sexton”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-227-05

**STYLE OF CAUSE:** ANDREW CZARNOGORSKI  
Appellant  
and  
SOCIETY OF COMPOSERS, AUTHORS,  
AND MUSIC PUBLISHERS CANADA  
Respondent

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** OCTOBER 3, 2007

**REASONS FOR JUDGMENT  
OF THE COURT BY:** (NADON, SEXTON, SHARLOW J.J.A.)

**DELIVERED FROM  
THE BENCH BY:** SEXTON, J.A.

**APPEARANCES:**

RAY DI GREGORIO FOR THE APPELLANT/  
APPLICANT  
KELLY GILL FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

CAMPORESE SULLIVAN DI GREGORIO FOR THE APPELLANT/  
HAMILTON, ON APPLICANT  
GOWLINGS LLP, FOR THE RESPONDENT  
TORONTO, ON