

**Date: 20080828**

**Docket: A-103-07**

**Citation: 2008 FCA 250**

**BETWEEN:**

**HYUNDAI AUTO CANADA, a division of  
HYUNDAI MOTOR AMERICA**

**Appellant  
(Plaintiff)**

**and**

**CROSS CANADA AUTO BODY SUPPLY (WEST) LIMITED,  
CROSS CANADA AUTO BODY SUPPLY (WINDSOR) LIMITED,  
AT PAC WEST AUTO PARTS ENTERPRISE LTD.**

**Respondents  
(Defendants)**

**ASSESSMENT OF COSTS - REASONS**

**Johanne Parent  
Assessment Officer**

[1] The Court dismissed with costs the appeal of an order of the Honourable Mr. Justice Strayer who had dismissed the appellant's motion for an interlocutory injunction to prevent the respondents from using a trade-mark of the appellant. A timetable for written disposition of the assessment of the respondents' bill of costs was issued by the Senior Assessment Officer on May 20, 2008.

[2] Under Tariff B of the *Federal Court Rules*, the respondents claim as assessable services five units for Item 13. This item will not be allowed as the sub-heading in the Table of Assessable Services of the *Federal Court Rules* reads it properly “Pre-trial and pre-hearing procedures”, item 13 refers to procedures taking place prior to the trial or hearing as referred under the sub-heading E of this same Table and not to procedures taking place prior to an appeal.

[3] Considering the apparent complexity of the arguments, the factors set in Rule 400(3) and my reading of the file, six units will be allocated for the preparation of the memorandum of fact and law (Item 19) and three units to counsel per hour on hearing of the appeal (Item 22).

[4] I will allow item 25 for services after judgement as claimed.

[5] The six units claimed under item 26 for assessment of costs have not been contested by the appellant. Nevertheless, in looking at the material before me, I am of the opinion that the preparation for the assessment of costs on the appeal file did not require much more than for the motion file and I will therefore allocate the same number of units i.e four.

## **DISBURSEMENTS**

[6] Photocopies done at outside copyhouses (\$876.25) and on-line computer charges (\$102.48) are substantiated by affidavit or in counsel’s representations and will be allowed as claimed.

[7] I am satisfied that the telephone charges (\$0.59) and facsimile charges (\$9) as substantiated in the affidavit of Nadine McMillan sworn January 24, 2008 were all charges necessary to the conduct of this matter and will therefore be allowed as considered reasonable.

[8] On the respondents' claim of \$127 for photocopies, the appellant submits that there is no explanation in the respondents' material supporting the in-house photocopy disbursements more particularly where it appears that outside printing houses were utilized. At this point, I would like to refer to the following excerpt from *Diversified Products Corp. v. Tye-Sil Corp.* (1990), 41 F.T.R. 227 (T.D.), 34 C.P.R. (3d) 267 (T.D.):

*... The item of photocopies is an allowable disbursement only if it is essential to the conduct of the action. Therefore, this is intended to reimburse a party for the actual out-of-pocket cost of the photocopy. The \$.25 charge by the office of plaintiffs' counsel is an arbitrary charge and does not reflect the actual cost of the photocopy. A law office is not in the business of making a profit on its photocopy equipment. It must charge the actual cost and the party claiming such disbursements has the burden to satisfy the taxing officer as to the actual cost of the essential photocopies.*

[9] The appellant makes further reference to *Janssen-Ortho Inc. and Daiichi Pharmaceutical Co., Ltd v. Novopharm Limited*, 2006 FC 1333 where the Court said:

*In this regard , the comments of this Court in Diversified Products Corp. v. Tye-Syl Corp, 1990 F.C.J. No. 1056 (QL) are appropriate in stating that the sum of \$0.25 per page is not simply an amount that can be charged without more. When an in-house service is used, the assessment officer must be advised as to the actual costs.*

Notwithstanding the meagre evidence found in the affidavit of Nadine McMillan sworn January 24, 2008, I still think that actual photocopy expenses were necessary in the conduct of this proceeding.

Nevertheless, in light of the jurisprudence mentioned above, I am not ready to allow the amount as claimed and for these reasons, I will allow a reduced amount of \$50 as a reasonable disbursement for photocopy expenses.

[10] The bill of costs is allowed at \$2,670.32 plus GST (\$151.10) for a total amount of \$2,821.42.

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“Johanne Parent”  
Assessment Officer

Toronto, Ontario  
August 28, 2008

**FEDERAL COURT OF APPEAL**

**SOLICITORS OF RECORD**

**DOCKET:** A-103-07

**STYLE OF CAUSE:** HYUNDAI AUTO CANADA a division of HYUNDAI MOTOR AMERICA v. CROSS CANADA AUTO BODY SUPPLY (WEST) LIMITED, CROSS CANADA AUTO BODY SUPPLY (WINDSOR) LIMITED and AT PAC WEST AUTO PARTS ENTERPRISE LTD.

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

**REASONS FOR ASSESSMENT OF COSTS:** JOHANNE PARENT

**DATED:** AUGUST 28, 2008

**WRITTEN REPRESENTATIONS:**

Jeffrey Brown FOR THE APPELLANT

Timothy M. Lowman FOR THE RESPONDENTS

**SOLICITORS OF RECORD:**

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