

Date: 20090217

Docket: A-16-98

Citation: 2009 FCA 45

BETWEEN:

CANADIAN SOLIFUELS INC.

Appellant

and

HER MAJESTY THE QUEEN

Respondent

ASSESSMENT OF COSTS - REASONS

Johanne Parent
Assessment Officer

[1] On September 24, 2001, the Court dismissed with costs the appeal from a decision of the Tax Court of Canada. The registry of the Court received the respondent's bill of costs on December 28, 2007. On January 28, 2008, the appellant's counsel sent a letter to the Court indicating that he no longer represented the appellant and did not intend to appear on the assessment of costs.

[2] Further to correspondence with the respondent's counsel, a timetable for written disposition of the assessment of the bill of costs was issued, and sent to both counsel on file on September 15, 2008.

[3] Considering counsel for the appellant's communication with the Court in January 2008 and the fact that the appellant did not file a notice of change or removal of solicitor under Rule 124 of the *Federal Courts Rules* and that no motion for removal of solicitor pursuant to rule 125 was received, on November 21, 2008, both counsel for the appellant and the appellant Canadian Solifuels Inc. were sent directions from the Assessment Officer establishing a new timetable for submitting submissions. The documents sent via registered mail to the appellant Canadian Solifuels Inc. were returned to the Registry. Considering rule 140(3) of the *Federal Courts Rules*, the same documents served on the appellant on November 21, 2008 were posted on the public notice board of the Registry in Toronto on December 2, 2008.

[4] To date, no submissions or correspondence on costs on behalf of Canadian Solifuels have been received or filed. I am satisfied that the appellant has been afforded an opportunity to respond to the costs materials. Counsel for the respondent filed his affidavit within the prescribed timeframe. The assessment of the respondent's bill of costs will proceed despite its non-contestation.

[5] As stated on many occasions by Charles Stinson, Senior Assessment Officer, and most recently in *Bell v. Canada* [2008] F.C.J. No. 282: "The *Federal Courts Rules* do not contemplate a litigant benefiting by having an assessment officer step away from a neutral position 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."

[6] In accordance with the above referenced comments, the disbursements claimed are allowed as supported by affidavit, not contested and deemed necessary to the conduct of this matter.

[7] The respondent claims as assessable service under Item 17 for the filing of the notice of intent to participate. This claim is denied as Item 17 only covers for the preparation, filing and service of the notice of appeal. The claim presented under Item 18 for the preparation of the Appeal Book is denied as the Court record indicates that the Appeal Book was prepared and filed by the appellant. Claims for the filing of the motions' records in response to the appellant's motions for extension of time to file the Appeal Book and for an order extending time for filing the requisition for hearing, are denied since the Courts' orders of July 23, 1999 and June 27, 2000 are silent as to costs. In *Janssen-Ortho v. Novopharm*, 2006 FC 1333, the Court determined that, "any pre-trial order that is silent as to costs means that no costs have been awarded to any party". Item 19 is allowed five units for the preparation of the Memorandum of fact and law. The additional claim for the preparation and filing of an Amended Memorandum of fact and law is denied as Item 19 makes no provision for amended documents. Item 22 and 25 are allowed as presented. Item 26 is reduced to 3 units since the assessment of costs necessitated some correspondence but was uncomplicated and proceeded unchallenged.

[8] The bill of costs is allowed for a total amount of \$3,132.47

"Johanne Parent"

Assessment Officer

Toronto, Ontario
February 17, 2009

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-16-98

STYLE OF CAUSE: CANADIAN SOLIFUELS INC. v. HER MAJESTY THE
QUEEN

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

REASONS FOR ASSESSMENT OF COSTS: JOHANNE PARENT

DATED: February 17, 2009

WRITTEN REPRESENTATIONS:

No appearance FOR THE APPELLANT

Brent E. Cuddy FOR THE RESPONDENT

SOLICITORS OF RECORD:

Alpert Law Firm FOR THE APPELLANT
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