Federal Court of Appeal | Cour d'appel fédérale

CANADA

Date: 20100624

Docket: A-202-08

Citation: 2010 FCA 173

BETWEEN:

MOIRA-EILEEN DROSDOVECH

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

ASSESSMENT OF COSTS - REASONS

Charles E. Stinson
Assessment Officer

[1] The Court dismissed with costs this appeal of a decision of the Tax Court of Canada concerning insurability and pensionability of one's employment. I issued a timetable for written disposition of the assessment of the Respondent's bill of costs.

[2] The Appellant filed a reply document which could be described as unfocused, but which I perceive as general opposition to the bill of costs. It includes this passage under the subheading – Motion To Stay Taxation Determination –: "the Appellant motions that the Senior Assessment Officer and/or this Court stay its decision on Taxation of the Respondent's Bill of Costs and to

direct the Respondent to abandon its Notice of Taxation." This is not in accord with the Rules for relief from the Court.

[3] However, to the extent that the reply document requests a stay or direction for abandonment by my hand, I note that any such jurisdiction falls to the Court. I am not the "Court" as that term is used in the *Federal Courts Rules*: see *Sander Holdings Ltd. v. Canada (Minister of Agriculture)*, [2009] F.C.J. No. 720 (A.O.) and *Marshall v. Canada*, [2006] F.C.J. No. 1282 (A.O.) [*Marshall*]. The Appellant misconceives the role of an assessment officer: see para. 3 of *Marshall* above which summarizes the parameters and practice for an assessment of costs.

[4] Effectively, these circumstances are as if the Appellant had advanced no materials given the absence of any relevant representations which could have assisted me in identifying issues and making a decision. My view, often expressed in comparable circumstances, is that 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. I examined each item claimed in the bill of costs and the supporting materials within those parameters.

[5] My findings in *Halford v. Seed Hawk Inc.* (2009), 69 C.P.R. (4th) 1, [2006] F.C.J. No. 629 (A.O.), *Biovail Corp. v. Canada (Minister of National Health and Welfare)* (2007), 61 C.P.R. (4th) 33, [2007] F.C.J. No. 1018 (A.O.), aff'd (2008), 64 C.P.R. (4th) 475, [2008] F.C.J. No. 342 (F.C.)

and *Abbott Laboratories v. Canada (Minister of Health)* (2008), 66 C.P.R. (4th) 301, [2008] F.C.J. No. 870 (A.O.) [*Abbott*] set out my views on the threshold of proof for categories of costs and approach to their assessment. Paragraphs 68 to 72 inclusive of *Abbott* above summarize the subjective elements and the notion of rough justice in assessments of costs. In paragraphs 38 to 40 of *Aventis Pharma Inc. v. Apotex Inc.*, [2009] F.C.J. No. 56 (A.O.) [*Aventis* 2009], I reinforced my view that an assessment of costs should reflect the reality of the demands of litigation. I endorse the practical approach in paragraph 69 of *Merck & Co. v. Canada (Minister of Health)*, [2007] F.C.J. No. 428 (A.O.) aff'd on its points and others, but varied on others [2007] F.C.J. No. 1337 (F.C.). Paragraph 14 of *Merck & Co. v. Apotex Inc.* (2009), 73 C.P.R. (4th) 423, [2008] F.C.J. No. 1656 (F.C.A.) held that "in view of the limited material available to assessment officers, determining what expenses are "reasonable" is often likely to do no more than rough justice between the parties and inevitably involves the exercise of a substantial degree of discretion on the part of assessment officers." This practice of rough justice does not however require an assessment officer to approve any and all claimed items of costs without question. Disallowances or reductions often occur. I have generally held that a paucity of evidence may result in conservative allowances.

[6] The total amount claimed in the bill of costs is generally arguable as reasonable within the limits of the award of costs and is allowed as presented except for one item in the photocopying claim of $1,149.86 which requires my intervention. Judgment was rendered on February 25, 2009. On April 9, 2009, the Court denied the Appellant's motion for an extension of time (the extension motion) for reconsideration of the judgment and awarded lump sum costs of $200 to the Respondent. Invoice no. 24691 dated 17/03/2009 for $65.94 refers to the copying, collation and binding of 31 originals into sets or books. The Respondent's motion record filed March 20, 2009

in reply to the extension motion was that length. I am not satisfied on the evidence that the lump sum award of $200 does not account for this $65.94 and I therefore remove this latter amount from the assessed total.

[7] The bill of costs includes the $200 lump sum award presumably for convenience in collecting all heads of costs within a single document for ease of reference and to preclude confusion during execution. However, that is not a function of an assessment officer. The lump sum award is already capable of execution without the necessity of forming part of my certificate of assessed costs. Form 425A (Writ of Seizure and Sale) permits, in my opinion, such a collection within a single document of the various judgment sums including costs for the purpose of execution. I therefore exclude the $200 from my assessed total.

[8] The Respondent's bill of costs, presented at $3,312.99, is assessed and allowed at $3,047.05.

"Charles E. Stinson"
Assessment Officer

Vancouver, BC
June 24, 2010

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-202-08
STYLE OF CAUSE:	MOIRA-EILEEN DROSDOVECH v. MNR

ASSESSMENT OF COSTS IN WRITING WITHOUT PERSONAL APPEARANCE OF THE PARTIES

REASONS FOR ASSESSMENT OF COSTS:	**CHARLES E. STINSON**
DATED:	June 24, 2010

WRITTEN REPRESENTATIONS BY:

Moira-Eileen Drosdovech	FOR THE APPELLANT (self-represented)
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