

Federal Court of Appeal	 CANADA	Cour d'appel fédérale
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Date: 20101103

Docket: 09-A-42

Citation: 2010 FCA 293

BETWEEN:

DRAGAGE VERREAU LT INC.

Petitioner

and

**CONSTRUCTION McNALLY DU QUÉBEC
INC. and
LA SOCIÉTÉ CANADIENNE DE SEL LTÉE.**

Respondents

ASSESSMENT OF COSTS – REASONS

**Johanne Parent
Assessment Officer**

[1] On February 5, 2010, the Court dismissed the motion for leave to appeal pursuant to Section 41 of the *Canada Transportation Act*, with costs. Construction McNally du Québec Inc. (the respondent) filed its Bill of Costs on June 1, 2010. Directions were issued and sent to parties on

August 20, 2010, informing parties that the costs assessment would proceed in writing along with the deadline to file representations.

[2] The counsel fees claimed by the respondent are :

Item	Assessable Service	Number of Units
16	Prepare to respond to the motion for leave to appeal	6
17	Preparation, filing and service of notice of appeal	1
19	All the preparation for responding to the motion for leave, including preparation of memorandum of fact and law	6
27	Other services, including case law research and reporting to client on matter	3@\$420
26	Assessment of Costs	6@\$315

[3] In his submissions, counsel for the respondent provides a brief history of the file, not specifically addressing costs issues.

[4] The six units claimed under Item 16 for the response to the Motion for leave to appeal will be reduced to five units as suggested by counsel for the petitioner. As mentioned in my Reasons for Assessment in this file regarding the Bill of Costs of the respondent, Canadian Salt Company Ltd. (2010 CAF 216) filed on August 25, 2010, I am of the opinion that this was not a complex matter. Further, the extent of the respondent's Motion Record of January 4, 2010 does not justify the number of units claimed.

[5] The one unit claimed under Item 17 will be disallowed. Counsel for the petitioner in her submissions states that this claim is ill-founded in light of the fact that they were the one filing and serving the Motion for leave to appeal. I read that Item 17 stands for the preparation, filing and service of a Notice of Appeal. Considering that this matter started with a Motion for leave to appeal, that a Notice of Appeal was never filed by either party and that Construction McNally was one of the respondents in this matter, this Item is disallowed.

[6] The respondent claimed six units for “all the preparation for responding to the motion for leave, including preparation of memorandum of fact and law”. As mentioned in my Reasons of August 25, 2010 (previously cited), Item 19 usually relates to the services that concern a memorandum of fact and law for an appeal under Rule 335 of the *Federal Courts Rules*. Considering that a motion for leave to appeal is not an appeal contemplated by the Rules, I consider that Item 19 does not apply and will, therefore, be disallowed. I further consider that the preparation for the motion for leave to appeal was already covered under Item 16.

[7] The respondent claimed 3 units x \$420 under Item 27 for “other services including case law research and reporting to client on matter”. The submissions filed by counsel for the petitioner asserted that “the unit value is not discretionary” and that Item 27 is meant to indemnify extraordinary items not covered elsewhere.

[8] I note that Item 27 reads “such other services as may be allowed by the assessment officer or ordered by the Court”. Item 27 contemplates the services of counsel not already addressed by Items 1 to 26. I am of the view that case law research and meeting with client fall within the scope of

indemnification under Item 16 for services by counsel on the Motion for leave to Appeal and all services prior the hearing. Item 27 will, therefore, be disallowed.

[9] Under Item 26, the respondent claimed six units x \$315 for the assessment. Counsel for the petitioner submitted that “the number of units claimed is very high considering the file and submissions on costs provided” (paragraph 19 of Written Representations). I agree. Given my experience in dealing with assessment of costs and considering the affidavit and representations filed by the respondent, three units will be allowed. Alternatively, Sections 3 and 4 of Tariff B of the *Federal Courts Rules* specify the Unit value and its adjustment. On April 23, 2010, the Court established the Unit value to \$130. Consequently, the three units will be allowed at \$130/unit.

[10] I examined the disbursement claimed and I consider it a necessary charge to the conduct of this matter. The amount is not contested, is reasonable and is therefore allowed at \$63.78.

[11] The bill of costs is allowed for a total amount of \$1,155.78 inclusive of GST.

"Johanne Parent"
Assessment Officer

Toronto (Ontario)
November 3, 2010

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET : 09-A-42

STYLE OF CAUSE : DRAGAGE VERREAULT INC. v.
CONSTRUCTION McNALLY DU QUÉBEC
INC. and LA SOCIÉTÉ CANADIENNE DE
SÉLÉCTION.

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

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

DATED: November 3, 2010

WRITTEN REPRESENTATIONS:

Marie-Claude Laplante FOR THE PETITIONER

Marc D. Isaacs FOR THE RESPONDENT Construction
McNally du Québec Inc.

SOLICITORS OF RECORD :

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