

Federal Court



Cour fédérale

Date: 20230925

Docket: T-1728-21

Citation: 2023 FC 1272

**ADMIRALTY ACTION *IN REM* AGAINST THE SHIP “KARINE G”
AND *IN PERSONAM***

BETWEEN:

**OCEAN GEAR INC., A BODY
CORPORATE**

Plaintiff

and

**THE OWNERS AND ALL OTHERS
INTERESTED IN THE SHIP “KARINE G” AND
3087477 NOVA SCOTIA LIMITED,
A BODY CORPORATE**

Defendants

REASONS FOR ASSESSMENT

Stéphanie St-Pierre Babin, Assessment Officer

I. Overview

[1] By way of Order dated December 15, 2022 [Order], the Court granted Ocean Gear Inc., a body corporate's [Plaintiff] *ex parte* motion for default judgment against the *in personam* Defendant, 3087477 Nova Scotia Limited, and the *in rem* Defendants, the owners and all others interested in the ship "KARINE G" [collectively, the Defendants]. The Court further awarded costs in favour of the Plaintiff to be fixed in the middle of Column III of the table to Tariff B, to be assessed by an assessment officer (Order dated December 15, 2022, at page 6).

[2] Consequently, on April 27, 2023, the Plaintiff filed its Bill of Costs in accordance with subsection 406(1) of the *Federal Courts Rules*, SOR/98-106 [Rules]. Upon receipt of the Plaintiff's Bill of Costs, I issued a Direction on May 19, 2023, to inform the parties that the assessment would proceed in writing and of the deadlines to file their respective representations [Direction].

[3] Having reviewed the Bill of Costs, I will now discuss two preliminary issues. I shall then address the assessable services and disbursements claimed, and finally determine the amount owed by the Defendants to the Plaintiff for this assessment of costs.

II. Preliminary Issues

A. *What is the impact of the absence of written representations?*

[4] Subsequent to the issuance of the Direction, the Defendants did not serve any responding documents nor any request for an extension of time to do so. The absence of representations by the Defendants results in the Plaintiff's Bill of costs being unopposed. In such cases, my duty as

an assessment officer is to consider each claim of the Bill of Costs to ensure that the assessable services and disbursements claimed comply with the procedural steps followed in this proceeding, the Rules and the applicable jurisprudence, without stepping away from my position of neutrality. If certain claims go outside these parameters, I will intervene to ensure the assessment complies with them (*Dahl v Canada*, 2007 FC 194 at para 2).

B. *What unit value shall apply to this assessment of costs?*

[5] Likely through inadvertence, the Plaintiff applied the unit value of \$176.00 in its Bill of Costs and no further explanation was provided in support of this amount. I cannot accept to apply this unit value for the following reasons.

[6] On an assessment, the assessment officer allocates a number of units to each assessable service to be multiplied by a unit value. The Federal Court of Appeal recently confirmed that the unit value to be used is the one in effect at the time the request for an assessment of costs was filed (*Lessard-Gauvin v Canada (Attorney General)*, 2019 FCA 233 at paras 4, 22). In other words, as the Plaintiff's Bill of Costs was filed on April 27, 2023, I am obliged to apply the unit value in force at that time, which is \$170.00 (Subsection 4(1) to Tariff B).

III. Assessment of Costs

A. *Assessable Services*

[7] The Plaintiff claims a total of 21 units for assessable services in the Bill of Costs. I will now address the individual claims in turn.

(1) Items 1, 4, 6 and 25

[8] After a careful review of the Bill of Costs and the Court record, I consider the claims for the following assessable services to be in accordance with the authority of the Order, Tariff B of the Rules as well as the applicable jurisprudence. Therefore, a total of 11 units is allowed for the following:

- Item 1: Preparation and filing of originating documents, which includes the Statement of Claim, the Affidavit to Lead Warrant and Warrant (5 units).
- Item 4: Preparation and filing of an uncontested motion, the *ex parte* motion for default judgment filed on August 25, 2022 (3 units).
- Item 6: Appearance on a motion, per hour, for the attendance at the hearing of the *ex parte* motion for default judgment held on November 25, 2022 (2 units).
- Item 25: Services rendered after the Order dated December 15, 2022 (1 unit).

[9] Despite the above, the following assessable services require my intervention.

(2) Item 5

[10] The Plaintiff submits a claim of 5 units for the preparation and filing of a contested motion without specifying the motion in question. A review of the file reveals that the Court has declared that the Defendants did not formally engage in the proceeding given the fact that they have not retained counsel or communicated with the Registry or the Court at all (Order dated December 15, 2022, at page 2). In the absence of written submissions from the Plaintiff to support this claim and in the presence of the Court's declaration that the Defendants chose not to

participate in the proceeding given the sufficient opportunity to do so, I am unable to indemnify the Plaintiff for a contested motion in accordance with Item 5.

(3) Items 21(a) and 21(b)

[11] Turning to Items 21(a) and (b), the Plaintiff claims 6 units for a motion, including its preparation, service, the written representations in its support and the appearance at the oral hearing, without specifically indicating for what motion the claims were presented.

[12] Items 21(a) and (b) are inapplicable in this assessment because these services are found under *Part F. Appeals to the Federal Court of Appeal* of the table to Tariff B while this proceeding is before the Court.

[13] Even more so, a thorough examination of the file leads me to conclude that only one interlocutory motion was dealt with by the Court in this proceeding, namely the motion for default judgment filed on August 25, 2022. The services performed in relation with said motion were compensated for at paragraph 8 of these Reasons. Therefore, allowing Items 21(a) and (b) would duplicate the costs of the motion for default judgment and would result in an overpayment in favour of the Plaintiff, which is an inappropriate result for an assessment of costs. For the above reasons, and in the absence of written submissions or jurisprudence to support the claims presented under Item 21, I have no alternative but to disallow both.

IV. Disbursements

[14] First, the Plaintiff inadvertently claims \$50.00 for the filing of a Notice of Application. Notice of Applications are filed to initiate a judicial review proceeding whereas this assessment of costs arises from an action proceeding in which the originating document was a Statement of Claim filed on November 16, 2021. Tariff A provides that the fee payable on issuance of a Notice of Application is \$50.00 (paragraph 1(1)(d) of Tariff A) while the fee payable on issuance of a Statement of Claim is \$150.00 (subparagraph 1(1)(a)(iii) of Tariff A). As the Federal Courts Fees Receipt No. A600571 issued on November 16, 2021, indeed confirms that the amount of \$150.00 was indeed paid for the filing of the Statement of Claim, I conclude that it is justified to allow the amount of \$150.00 in the particular circumstances of this case.

[15] Second, I cannot allow the second amount of \$50.00 claimed for a Hearing Requisition, as no requisition for hearing was filed in the Court record pursuant to Rule 314, and no Federal Courts Fees Receipt was issued for such requisition (paragraph 1(2)(f) of Tariff A).

V. Amount Due

[16] For all of the above reasons, the Plaintiff's costs are assessed and allowed in the amount of \$2,020.00. A Certificate of Assessment will be issued accordingly, payable by the Defendants, the owners and all others interested in the ship "KARINE G" and 3087477 Nova Scotia Limited a body corporate, to the Plaintiff, Ocean Gear Inc., a body corporate.

"Stéphanie St-Pierre Babin"
Assessment Officer

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1728-21

STYLE OF CAUSE: OCEAN GEAR INC., A BODY CORPORATE v. THE OWNERS AND ALL OTHERS INTERESTED IN THE SHIP "KARINE G" et al

MATTER CONSIDERED AT OTTAWA, ONTARIO, WITHOUT PERSONAL APPEARANCE OF THE PARTIES

REASONS FOR ASSESSMENT: STÉPHANIE ST-PIERRE BABIN, Assessment Officer

DATED: SEPTEMBER 25, 2023

WRITTEN SUBMISSIONS BY:

Dylan A.F. MacDonald FOR THE PLAINTIFF

N/A FOR THE DEFENDANTS

SOLICITORS OF RECORD:

Stewart McKelvey FOR THE PLAINTIFF
Barristers and Solicitors
Halifax, Nova Scotia

N/A FOR THE DEFENDANTS