

Date: 20071031

Docket: T-1087-05

Citation: 2007 FC 1125

BETWEEN:

4059573 CANADA INC.

and

MONDO GROUP INC.

Applicants

and

PIERRE PELLETIER

and

DANIEL DUMAIS

and

J.P. DOUMAK TEXTILES INC.

and

COSTCO CANADA INC.

and

IMPORTATIONS JEREMY D. INC.

and

MARK CHEVRIER

Respondents

ASSESSMENT OF COSTS – REASONS

DIANE PERRIER, ASSESSMENT OFFICER

[1] This is an assessment of three bills of costs in writing by the respondent Costco Canada Inc., the respondents J. P. Doumack Textiles Inc. and Mark Chevrier and the respondent Importations Jeremy D Inc. pursuant to the Court judgment of October 2, 2006 dismissing the applicants' action with costs.

[2] On March 1, 2007 we sent letters to the parties setting a schedule for the filing of representations against the three bills of costs. We received three objections to the bill of costs from the applicants out of time. I allowed the bill of costs objections to be filed and, following that, I sent letters to the respondents giving them additional time to file their replies. The respondents answered that they did not intend to file a reply. I am now prepared to undertake the assessment of the three bills of costs.

[3] The assessable services in the respondent Costco Canada Inc.'s bill of costs are allowed in the amount of \$4,360.16 (\$3,840 + \$230.40 (GST) and \$289.76 (QST)). The respondent is claiming the maximum units for each of the items claimed. In view of the representations by the applicant against the bill of costs and Rule 409 of the FCR, which indicates that an assessment officer may consider the factors referred to in subsection 400(3) of the FCR in assessing costs, I have allowed five units for the preparation of each of the affidavits of Cindy Wong, Donna Watt, Glorinda Burswash and Viesa St. Peter, which were filed following an application by the applicant for an injunction. I have allowed five units in item 9 for preparation of the examination of Cindy

Wong, as requested by the respondent. I have allowed three units for attendance at the examination of Cindy Wong, which in the circumstances seems to be reasonable. I have allowed one unit in item 25, since it is accepted practice to grant this item where the Court's order of October 2, 2006 concludes this case. I have awarded three units in item 26 for assessment of the bill of costs, since in my opinion the assessment does not warrant the maximum number of units.

[4] The respondent Costco Canada Inc. is claiming double costs on account of an offer of settlement served on the applicant on July 14, 2005. Here we must refer to Rule 420(2) of the FCR, which indicates that if the plaintiff does not succeed against the defendant, which is the case here, the defendant will be entitled to double party-and-party cost from the date of service of the offer to the date of the judgment, in this case the Court's order of October 2, 2006, but not to double disbursements. I have awarded costs in the amount of \$3,360, but omitting items 25 and 26, which occurred after the Court's order of October 2, 2006 which terminated the case.

[5] Disbursements in the amount of \$1,767.17 are awarded, since they seem to me to be reasonable and are proven by the affidavit of Ian MacPhee and the accompanying exhibits.

[6] The bill of costs of the respondent Costco Canada Inc. submitted in the amount of \$13,526.81 is assessed in the amount of \$9,487.33. A certificate of assessment will be issued for this amount.

[7] The assessable services in the bill of costs of the respondents J.P. Doumack Textiles and Mark Chevrier are awarded in the amount of \$12,033.12 (\$10,560 + GST \$633.60 + QST \$839.52).

I have awarded six units in item 5 for the affidavit of Martin Smith against the motion for an interlocutory injunction, in view of its scope and Exhibits D-1 to D-8. At the same time, on the affidavits of Mark Chevrier and Brahm Faber I have allowed five units for each of those affidavits since they are not extensive and do not warrant the maximum number of units requested by the respondent. I have allowed six units in item 5 as requested (preparation and filing of contested motion on October 2, 2006 appealing decision of prothonotary), in view of the absence of any contest by the applicant and the outcome of the proceeding. On item 6, I have awarded three units for each of the appearances. However, I have taken into account the length of the appearances in Court according to the hearing summary in the record. The appearance before Harrington J. on July 21, 2005 was 15 minutes instead of one hour, and the same is true for the appearance before Beaudry J. on November 7, 2005, which was five minutes. At the same time, I have allowed an hour for the appearance on the motion to appeal the prothonotary's decision on October 2, 2006, as requested.

[8] Item 8 (preparation of examination) has been allowed as requested for the examinations of Mark Chevrier, held on November 15, 2005, Brahm Faber, held on November 15, 2005, and Martin Smith, held on November 16, 2005. On the preparations for examinations of Jacques Benhaim, Roger Azuelos, Cindy Wong, Pierre Pelletier and Patrick Ellahad, the assessment officer cannot award these since they are represented by different counsel and the costs are assessed on a party-and-party basis under Rule 407 of the FCR. The same will apply to item 9 (attendance at examinations), on which I have allowed three units x two hours for attendance at the examination of Brahm Faber, three units x three hours for attendance at the examination of Mark Chevrier and three units x two hours for attendance at the examination of Martin Smith, who were represented by

counsel for the respondent J.P. Doumak Textiles Inc. and Mark Chevrier. I did not award item 9 for attendance at the examination of Jacques Benhaim, Roger Azuelos, Pierre Pelletier and Patrick Elhahad, as they were represented by other counsel and the assessment is still a partial offset of the amounts paid by various parties in the record. Further, all the items 9 to do with the attendance of a second counsel cannot be awarded, since under Tariff B there is no mention of a second counsel for this item. If we look at Tariff B, by analogy, in item 14(b) where a second counsel is mentioned this must be obtained from the Court. As the order of October 2, 2006 says nothing about this, I cannot allow this request.

[9] On item 25 (services after judgment), I have awarded this as requested since there was an order by the Court terminating the case. At the same time, I have allowed four units for assessment of the bill of costs, since it seems to me that this assessment is more complex than other assessments in the case. I have not awarded item 27 for the other services associated with the expert affidavit of Brahm Faber, since there appears to be no item covering this in Tariff B, for an expert report. At the same time, I have awarded three units in item 27 for preparation of the respondents' reply to the "Notice of Status Review", since this item is often awarded in such a case.

[10] The respondents J. P Doumack Textiles Inc. and Mark Chevrier are claiming double costs following the offer to settle which they served on the applicants on July 14, 2005. I have allowed the sum of \$9,396 for double costs for the same reasons as given in paragraph 4 of these reasons.

[11] Disbursements are awarded in the amount of \$2,421.14. I have not allowed a disbursement for service of notice to appear, since this item is not included in the assessable services of Tariff B.

However, I have allowed all the other disbursements since they are proven by Mr. Grenier's affidavit and the accompanying exhibits.

[12] The bill of costs submitted by the respondents J.P. Doumack Textiles Inc. and Mark Chevrier in the amount of \$55,070.79 is assessed in the amount of \$24,414.26. A certificate will be issued for that amount.

[13] The fees for assessable services of the respondent Importations Jeremy D Inc. are allowed in the amount of \$3,828.72 (\$3,360 + GST \$201.60 + QST \$267.12). I have allowed five units instead of the seven units claimed by the respondent for the preparation of each of the affidavits of Sylvain Ouimet, Pierre Pelletier and Patrick Elhadad as, according to the content of the affidavits, it seems reasonable not to award the maximum requested. Item 6 claimed for the appearance before Harrington J. on July 21, 2005 has been allowed based on the length of the appearance, namely 15 minutes. The same will apply to the appearance before Beaudry J. on November 7, 2005, which only lasted for five minutes. Item 8 has been awarded for preparation of the examination of Patrick Elhadad. I have not awarded item 8 for preparation of the examination of Mr. Azuelos, since the costs are assessed on a party-and-party basis and he is a client of the applicants, not the respondent. Item 9 has been allowed for attendance at the examination of Mr. Elhadad, but not for that of Mr. Azuelos and Mr. Benhaim, who are clients of the applicants. I have allowed item 25 as requested. On the other hand, I have allowed three units for assessment of the bill of costs since the assessment in my opinion does not warrant the maximum units requested.

[14] The respondent is claiming double costs since an offer to settle was served on the applicant on July 13, 2005. I have awarded the sum of \$2,880 in view of the reasons given in paragraph 4 of these reasons.

[15] Disbursements are allowed in the amount of \$1,887.86. I have not allowed costs of serving the notice to appear, since there is no assessable service for this item in Tariff B. However, I have allowed all the other disbursements since they are proven by Joanne Chriqui's affidavit and the accompanying exhibits.

[16] The bill of costs of the respondent Importations Jeremy D. Inc. submitted in the amount of \$17,300.10 is allowed in the amount of \$8,596.58. A certificate of assessment will be issued for that amount.

“Diane Perrier”
DIANE PERRIER
ASSESSMENT OFFICIER

QUÉBEC, QUEBEC
October 31, 2007

Certified true translation

Brian McCordick, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET:

T-1087-05

4059573 CANADA INC. and MONDO GROUP INC.

Applicants

PIERRE PELLETIER and DANIEL DUMAIS and J.P.
DOUMAK TEXTILES INC. and COSTCO CANADA INC.
and IMPORTATIONS JEREMY D. INC. and MARK
CHEVRIER

Respondents

ASSESSMENT OF COSTS WITHOUT APPEARANCE BY PARTIES

REASONS FOR ASSESSMENT: DIANE PERRIER

DATED: OCTOBER 31, 2007

SOLICITORS OF RECORD:

Roger Vokey
Shaffer et associés
Montréal, Quebec

FOR THE APPLICANTS

François M. Grenier
Léger, Robic, Richard
Montréal, Quebec

FOR THE RESPONDENTS
J.P. Doumak Textiles Inc. and Mark Chevrier

Louis-Charles Landreville
Montréal, Quebec

FOR THE RESPONDENTS
Pierre Pelletier and Daniel Dumais

Ian MacPhee
Lapointe, Rosenstein
Montréal, Quebec

FOR THE RESPONDENTS
Costco Canada Inc.

Johanne Chriqui and Daniel Drapeau
Ogilvy, Renault
Montréal, Quebec

FOR THE RESPONDENTS
Les Importations Jeremy D. Inc.