

Date: 20081126

Docket: T-117-02

Citation: 2008 FC 1327

BETWEEN:

MURI PEACE CHILTON

Plaintiff

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Defendant

ASSESSMENT OF COSTS - REASONS

Johanne Parent
Assessment Officer

[1] On July 19, 2005, the Court dismissed the plaintiff's motion to amend his statement of claim and to add defendants to the action, with costs payable by the plaintiff to the defendant forthwith and in any event of the cause. A second motion on behalf of the plaintiff, this time for an order that two expert psychiatrists be appointed, was further dismissed by the Court with costs to the defendant on November 2, 2006. The defendant filed two bills of costs with regards to these orders on July 6, 2007 and timetables for written disposition of the assessment of these bills of costs were issued by the Senior Assessment Officer on July 20 and September 20, 2007. The defendant's counsel filed her written submissions within the prescribed timeframe. Although duly served with the defendant's submissions, the plaintiff did not file any submissions in reply. The plaintiff did

however serve and file with the Court a motion for directions to determine the meaning and intent of the orders of July 19, 2005 and November 2, 2006. The Court in dismissing without costs to any party this motion on December 11, 2007 indicated that “all of the arguments raised by the plaintiff on this motion may be presented to the Assessment Officer”. The assessment of the defendant’s bills of costs will therefore proceed, taking into consideration the defendant’s submissions on costs as well as the plaintiff’s arguments on his motion for directions to the Assessment Officer.

[2] This matter came to its final conclusion on all substantive issues with Mr. Justice Mandamin’s decision on September 17, 2008. In addition, Mr. Justice Mandamin directed on November 5, 2008 that: “the assessment of costs with respect to the Prothonotary Orders will continue to be conducted by the Assessment Officer”. Consequently, I am now ready to proceed with the assessment of the defendant’s costs as requested.

[3] I believe that with his directions, Mr. Justice Mandamin responded to most of the plaintiff’s arguments except for the argument that the plaintiff “is lacking sufficient funds to carry the burden of a costs order”. As stated in *Solosky v. Canada* [1977] 1 F.C. 663 and many times confirmed:

Furthermore, in deciding whether costs should or should not be awarded against an unsuccessful plaintiff, neither the ability to pay nor the difficulty of collection should be a deciding factor but, on the contrary, the awarding or refusal of costs should be based on the merits of the case. Unless special circumstances exist to justify an order to the contrary, costs should normally follow the event.

In accordance with the above mentioned reference, the plaintiff’s argument concerning his inability to pay is not a consideration in the assessment of costs.

[4] In both bills of costs, the respondent claims seven units under Item 4 for preparing and filing the responding material to the contested motions. With regards to the factors referred to in subsection 400(3) of the *Federal Courts Rules* along with the specifics of the file, I consider that neither the importance of and complexity of the issues (c) nor the amount of work (g) justify the high end of Column III. I allow five units under Item 4 for each bill of costs. Item 25 will not be allowed as it is specific to services after judgment and these bills of costs clearly relate to interlocutory orders, not a judgment. Item 26 will be allowed as claimed in both bills of costs.

[5] The bill of costs relating to the Order of the Court dated July 19, 2005 is allowed for a total amount of \$840.00. The bill of costs relating to the Order of the Court dated November 2, 2006 is allowed for a total amount of \$840.00.

“Johanne Parent”
Assessment Officer

Toronto, Ontario
November 26, 2008

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-117-02

STYLE OF CAUSE: MURI PEACE CHILTON v. HER MAJESTY THE QUEEN
IN RIGHT OF CANADA

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

PLACE OF ASSESSMENT: TORONTO, ONTARIO

REASONS FOR ASSESSMENT OF COSTS: JOHANNE PARENT

DATED: NOVEMBER 26, 2008

WRITTEN REPRESENTATIONS:

Muri Peace Chilton

FOR THE PLAINTIFF
(SELF-REPRESENTED)

Joel R. Levine

FOR THE DEFENDANT

SOLICITORS OF RECORD:

N/A

FOR THE PLAINTIFF
(SELF-REPRESENTED)

John H. Sims, Q.C.
Deputy Attorney General of Canada

FOR THE DEFENDANT