

Federal Court



Cour fédérale

Date: 20090930

Docket: T-2084-07

Citation: 2009 FC 981

Ottawa, Ontario, September 30, 2009

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

2045978 ONTARIO INC. c.o.b. CHAPS THE ORIGINAL

Plaintiff

and

**CHAPS ALDERSHOT INC. c.o.b. LEZLEY'S CHAPS
and KEVIN SAUNDERS**

Defendants

and

**2022472 ONTARIO INC. and
JAMES GILLBERRY and ROBERT WILKINSON**

Third Parties

SUPPLEMENTARY REASONS FOR ORDER AND ORDER

[1] The issue of costs was reserved in my Reasons for Order and Order that issued in this matter on September 4, 2009. I have now reviewed the submissions of the parties.

[2] The Plaintiff seeks a lump sum award calculated on a solicitor-client basis for the costs of the summary judgment motion and the action to date. The Plaintiff has provided a draft Bill of Costs that shows actual fees incurred of \$81,486.40 and disbursements of \$6,479.93. There were two previous Orders of this Court wherein the Plaintiff was awarded costs totalling \$2,000.00; they remain unpaid. The Plaintiff claims one-half of its billed costs plus disbursements and the already ordered costs for a total of \$49,223.13.

[3] The Plaintiff makes numerous submissions as to why such an award is warranted. The principal submissions are that (1) it had served an offer to settle on July 28, 2009, and was awarded more on the summary judgment motion than that offer and (2) the Defendants used their resources to delay and frustrate the prosecution of this action and to increase costs.

[4] The Defendants deny that the Plaintiff was awarded more than the offer to settle and further submit that there was no delay on their part with respect to the action. They cite the fact that the corporate Defendant made a proposal in bankruptcy and the circumstances of the personal Defendant as reasons why there ought to be an award of less than \$10,000. They further take issue with what they describe as excessive hours docketed on the file by the Plaintiff's solicitors.

[5] Having reviewed the materials filed, I am satisfied that the Plaintiff recovered more than the offer to settle and thus under the Rules is entitled to receive more in costs after it was served.

[6] I am also satisfied that the corporate Defendant had no defence to the action, having admitted all of the elements of the action in the discovery of the personal Defendant as its representative. This motion was unnecessary and ought not to have been defended by the corporate Defendant. While the personal Defendant had “some” defence to the claim, it was tenuous at best.

[7] For these reasons the Plaintiff is entitled to an award of more than party and party costs. The conduct of the Defendants has been egregious but does not meet the standard justifying an award of solicitor-client costs.

[8] It is impossible on the materials filed to make any accurate assessment as to the docketed hours. Perhaps they are excessive; only an assessment officer could make that determination after a full hearing. However, given the steps taken in this action to date, they do not appear to be obviously off the mark.

[9] The Plaintiff says that its party and party costs and disbursements in a lump sum calculated in accordance with the upper end of Column V of Tariff B, including a doubling of costs associated with the summary judgment motion pursuant to Rule 420, amounts to \$22,330.00.

[10] In the circumstances and taking into consideration the factors set out in Rule 400, I fix costs in this action, including the costs ordered to date, at \$20,000.00. This amount is inclusive of fees, costs and GST and is ordered to be paid by the Defendants, jointly and severally, to the Plaintiff.

SUPPLEMENTARY ORDER

THIS COURT DECLARES that the Defendants, jointly and severally, shall forthwith pay to the Plaintiff the total amount of \$20,000.00 in respect of costs.

“Russel W. Zinn”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2084-07

STYLE OF CAUSE: 2045978 ONTARIO INC. (CHAPS THE ORIGINAL) v.
CHAPS ALDERSHOT INC. ET AL

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: August 31, 2009

**SUPPLEMENTARY REASONS
FOR ORDER AND ORDER:** ZINN J.

DATED: September 30, 2009

APPEARANCES:

Laurent Massam FOR THE PLAINTIFF

Chris Argiropolous FOR THE DEFENDANTS

SOLICITORS OF RECORD:

GOWLING, LAFLEUR HENDERSON LLP FOR THE PLAINTIFF
Barristers & Solicitors
Toronto, Ontario

BURNS, VASAN & ARGIROPOULOS LLP FOR THE DEFENDANTS
Barristers & Solicitors
Hamilton, Ontario

SCARFONE HAWKINS LLP FOR THE THIRD PARTIES
Barristers & Solicitors
Hamilton, Ontario