

Federal Court



Cour fédérale

Date: 20220815

Docket: T-751-21

Citation: 2022 FC 1200

Ottawa, Ontario, August 15, 2022

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

**DRAGONA CARPET SUPPLIES
MISSISSAUGA INC**

**Plaintiff/
Defendant by Counterclaim**

and

**DRAGONA CARPET SUPPLIES LTD AND
FLOORENO BUILDING SUPPLIES INC**

**Defendants/
Plaintiffs by Counterclaim**

ORDER AND REASONS

[1] The Defendants/Plaintiffs by Counterclaim [Dragona Scarborough] were successful in defending the Plaintiff's motion for summary trial with respect to its claim of passing off and successful in their own motion for summary trial with respect to their claim for expungement of the Plaintiff's registered trademarks TMA883,960, TMA883,962, and TMA 938,501.

[2] Judgment indicated that Dragona Scarborough was entitled to its costs of the action and counterclaim. The Court reserved jurisdiction to determine the appropriate costs if the parties were not able to reach agreement. During the litigation, the parties had agreed to very little and costs proved to be no exception to that history.

[3] Both parties filed comprehensive submissions of costs. The Court wishes the parties to know that it has reviewed those submissions in detail and carefully considered the positions expressed by both parties. I will not detail those submissions. There is some merit to the points made by each party.

[4] Dragona Scarborough seeks a lump sum award of costs of \$346,819.87, representing 65% of its fees of the Plaintiff's motion for summary trial inclusive of HST, 80% of its fees for its motion for summary trial inclusive of HST, and disbursements. It acknowledges that this is an "exceptional lump sum award of costs."

[5] Dragona Scarborough filed with its submission, invoices "attesting to the work done and associated costs." The Plaintiff submits that these are not sufficient and do not meet the detail required. I do not accept its submission that the evidence submitted parallels that rejected in *Patterned Concrete Mississauga Inc v Bomanite Toronto Ltd*, 2021 FC 792. There, unlike here, there was no description at all offered as to the work carried out. Here the invoices carry the work description of each docket entry. I also place no weight on the fact that each invoice is described as an "Interim Invoice" as opposed to a final invoice. I find that Dragona Scarborough

incurred costs respecting the claim of \$321,558.24, of the counterclaim of \$163,323.62, and disbursements of \$7,148.13, all inclusive of HST.

[6] I agree with Dragona Scarborough that a lump sum award is appropriate in this case. It will save the parties time and money. Moreover, the record before the Court contains sufficient evidence to make an award that is not merely picking a number out of the air, but a reasonable assessment based on the facts of this particular litigation.

[7] I do not accept the submissions of Dragona Scarborough as to the percentage of its solicitor client fees that ought to be awarded. Although the evidence of the Defendants was ultimately preferred over that of the Plaintiff, I do not find reprehensible, scandalous, or outrageous conduct as is alleged. The conduct of the Plaintiff in maintaining the legitimacy of its registered trademarks was not abandoned until the commencement of the hearing. It ought to have been done much earlier. In fact, based on the facts, it is a position that ought never to have been maintained. As such, Dragona Scarborough is entitled to recover a greater percentage of these fees as they were thrown away.

[8] Considering all of the evidence, and the nature of the disputes between these parties, I find that a lump sum award of \$242,244.09, representing 50% of the aggregate fees incurred plus \$7,148.13 for disbursements, all inclusive of HST, is appropriate.

[9] The Defendants are entitled to their costs, assessed at \$249,392.22, all in.

ORDER in T-751-21

THIS COURT ORDERS that the Plaintiff shall pay the Defendants their costs of this action, assessed at \$249,392.22, all in.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-751-21

STYLE OF CAUSE: DRAGONA CARPET SUPPLIES MISSISSAUGA INC
v DRAGONA CARPET SUPPLIES LTD AND
FLOORENO BUILDING SUPPLIES INC

**SUBMISSIONS ON COSTS CONSIDERED AT OTTAWA, ONTARIO, PURSUANT TO
THIS COURT'S JUDGMENT IN 2022 FC 1042**

ORDER AND REASONS ZINN J.

DATED: AUGUST 15, 2022

WRITTEN SUBMISSIONS BY:

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Adam Bobker

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DEFENDANT BY COUNTERCLAIM

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