

**Date: 20081218**

**Dockets: A-539-08  
A-538-08**

**Citation: 2008 FCA 410**

**Present: PELLETIER J.A.**

**BETWEEN:**

**A-539-08**

**STENNER FINANCIAL SERVICES LTD.**

**Appellant**

**and**

**THANE STENNER**

**Respondent**

**A-538-08**

**STENNER FINANCIAL SERVICES LTD.**

**Appellant**

**and**

**CIBC WORLD MARKETS INC.**

**Respondent**

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on December 18, 2008.

**REASONS FOR ORDER BY:**

**PELLETIER J.A.**

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**CIBC WORLD MARKETS INC.**

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**REASONS FOR ORDER**

**PELLETIER J.A.**

[1] The respondents, Thane Stenner and CIBC World Markets Inc., bring identical motions seeking an order that:

a) the appellant, Stenner Financial Services Ltd., post security of \$3,000 for costs awarded to each of the respondents by Prothonotary Lafrenière on September 2, 2008 within 14 days of the order of this Court;

b) the appellant post \$3,000 as security for the costs of each of the respondents in this appeal within 14 days of the order of this Court;

c) no stay be entered in this proceeding;

d) this appeal be dismissed without further application if security for costs is not posted in compliance with the order of this Court or, in the alternative, the respondents be at liberty to apply for an order dismissing this appeal if security for costs is not posted in compliance with the order of this Court, and;

e) the appellant pay the costs of the motion to each of the respondents.

[2] These reasons apply to both motions and a copy will be placed on each file.

[3] These are very curious motions. One wonders what purpose could be served by an order for security for costs already awarded, which costs are payable forthwith in any event of the cause. One cannot give security for costs which have already been incurred, and in respect of which an order has already been made.

[4] The motions for security for the costs of the appeal would be more straightforward but for the fact that the respondents specifically disclaim the entry of a stay of proceedings until the security has been posted. Thus, the matter could proceed, the costs incurred and reduced to judgment, before the security was ever posted. It is apparent that the motive for this motion is not to ensure that there are funds available to pay any eventual award of costs.

[5] It appears passably clear that the purpose of this motion is found at paragraph (d) above, that is, to allow the respondents to move for dismissal if security for costs has not been posted within the time provided. That way, the appeal could be disposed of summarily on procedural grounds rather than being heard on the merits. This is a transparent attempt to take advantage of the appellant's impecuniosity.

[6] The respondents brought the motion before Prothonotary Lafrenière seeking to remove certain material from the appellant's record on the basis that it was inadmissible. Success was divided in that the Prothonotary allowed some of the evidence – census data on the population of Vancouver – to remain and ordered the balance removed. The material ordered to be removed consisted of documents intended to show that the respondents had refused to allow written interrogatories to be put to one of their affiants. The Prothonotary's decision was upheld on appeal to the Federal Court.

[7] Having chosen to bring an interlocutory motion, the respondents must live with the consequences of their decision. The appellant exercised its right to appeal to the Federal Court and seeks to exercise its right to appeal to this Court. If it was sufficiently important to the respondents to have the material removed to merit an interlocutory motion to that end, then presumably it is important enough to the appellant to have the material on the record to justify an appeal of the order removing the material from the record.

[8] The appellant is entitled to have its appeal heard on the merits.

[9] The motions are dismissed with costs to the appellant of \$500 with respect to each motion payable forthwith in any event of the cause.

"J.D. Denis Pelletier"

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J.A.

**FEDERAL COURT OF APPEAL**  
**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKETS:** A-539-08  
A-538-08

**STYLE OF CAUSE:** A-539-08 - *STENNER FINANCIAL SERVICES LTD. and THANE STENNER*

A-538-08 - *STENNER FINANCIAL SERVICES LTD. and CIBC WORLD MARKETS INC.*

**MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES**

**REASONS FOR ORDER BY:** PELLETIER J.A.

**DATED:** December 18, 2008

**WRITTEN REPRESENTATIONS BY:**

Murray L. Smith FOR THE APPELLANT

Andrew Morrison FOR THE RESPONDENT THANE STENNER

Stephen T.C. Warnett FOR THE RESPONDENT CIBC WORLD MARKETS INC.

**SOLICITORS OF RECORD:**

Smith Barristers FOR THE APPELLANT  
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Shields Harney FOR THE RESPONDENT THANE  
Vancouver, B.C. STENNER

Borden Ladner Gervais LLP FOR THE RESPONDENT CIBC  
Vancouver, B.C. WORLD MARKETS INC.