

Federal Court of Appeal



CANADA

Cour d'appel fédérale

Date: 20100825

Docket: 09-A-42

Citation: 2010 FCA 216

[ENGLISH TRANSLATION]

BETWEEN:

DRAGAGE VERREAULT INC.

Moving Party

and

CONSTRUCTION McNALLY DU QUÉBEC INC.

and

THE CANADIAN SALT COMPANY LTD.

Respondents

ASSESSMENT OF COSTS – REASONS

JOHANNE PARENT, ASSESSMENT OFFICER

[1] On February 5, 2010, the Court dismissed with costs the motion for leave to appeal under section 41 of the *Canada Transportation Act*. Directions were sent to the parties on May 12, 2010, confirming that the assessment of the bill of costs of respondent The Canadian Salt Company (CSC) would proceed without personal appearance of the parties and outlining the time limits for filing written submissions.

[2] As part of the services to be assessed, five units were claimed under section 19 following the filing of the respondent's record from the CSC against the motion for leave to appeal. Section 19 generally deals with services related to the memorandum of facts and law in the context of an appeal under Rule 335 of the *Federal Courts Rules*. Since an application for leave to appeal is not an appeal under the *Federal Courts Rules*, I have taken the liberty to correct the item claimed for Item 16(a), which relates to all services provided before the hearing of the motion for leave to appeal, as this change in no way affects the number of units in Column III.

[3] In support of this claim, the CSC submits that the costs claimed were "calculated in the middle of the range of the units in Column III of Tariff B, which is consistent with the case law and with Rule 407 of the *Federal Courts Rules*." In contrast, the moving party argues that the amount of the costs claimed is exaggerated. Given the record and the rather uncomplicated debate required by the argument on leave to appeal, it is submitted that the number of units allowed should be four.

[4] I had the opportunity to read the respondent's record from the CSC, which contains Jean-Baptiste Dromer's affidavit and a memorandum of fact and law. As noted by the moving party, I am also of the opinion that this is not a very complex matter. However, considering Rules 409 and 400(3) of the *Federal Courts Rules* and upon reading the documents, I find that the workload resulting from this case warrants the number of units claimed by the CSC.

[5] In its bill of costs, the CSC claims four units under Item 26 for assessment of costs. In response, the moving party states that the minimum number of units should apply.

[6] Based on my experience in dealing with assessment costs and the respondent's affidavit and representations in connection with this assessment, three units shall be allowed.

[7] In support of the disbursements incurred by the CSC in this case, Johanne D'Astous' affidavit notes that [TRANSLATION] "the disbursements paid by Lavery, de Billy in client record 408014-00333 and then invoiced and paid by the respondent total \$2,038.44, as shown in the Summary of Costs in Lavery's accounting system, Appendix A."

[8] For its part, the moving party submits that the amounts claimed are exaggerated and that they are not supported by any supporting documentation. With respect to the number of photocopies claimed, the moving party argues that it is excessive and that a review is necessary given that the CSC Record, the only document produced by the respondent in this case, contains only 138 pages, "some of which were unnecessary." Referring to *Pieters v. Canada* 2005 FC 795, it is submitted that the actual costs of the photocopies essential to the conduct of the action must be taken into account.

[9] In *Diversified Products Corp. v. Tye-Sil Corp.* [1990] F.C.J. No. 1056, the Court stated that it is necessary for a party claiming photocopy costs to provide sufficient proof to the assessment officer that the copies claimed were essential to the debate. As mentioned earlier, the CSC provided a summary of all costs incurred by the law firm in this case in support of its claim. In these five pages of technical information, there are repeated references to photocopies or copies with dates,

names of those individuals responsible, numbers of copies and amounts charged, but nothing more.

There is no indication of the documents that were photocopied or reproduced or why they were necessary. Based on the aforementioned case law and the number of copies required to serve and file the respondent's record in this case, costs of \$380.00 are allowed for the printing of documents.

[10] In its bill of costs, the CSC claims facsimile (\$753.25), cell phone (\$24.96) and deliveries and registered mail (\$568.43) costs. In response, the moving party submits that there is no documentation [TRANSLATION] "supporting the amounts claimed, such as invoices, including but not limited to, the numerous bailiffs' fees..."

[11] Following a review of the Court Record, part of the invoices for bailiff services used in serving the respondent's record were found attached to the back of the respondent's record. These invoices corroborate the information contained in the summary table provided by the moving party and confirm that costs of \$167.15 were paid to serve the respondent's record to the other parties in this case on January 15, 2010. These costs will therefore be allowed. However, I cannot verify the costs of \$358.49 claimed for extrajudicial services on January 14, 2010, nor can I find any information to explain them. Therefore, these costs will not be allowed.

[12] With respect to facsimile costs, the vast majority (\$613.75) was billed on January 21, 2010, I can only conclude, as the moving party states in its representations, that the CSC allegedly served its record a second time to each of the parties by facsimile. Having no other justification for the amounts claimed for photocopying and on the strength of the principle that the party from whom the costs are collected should not be required to reimburse unjustified costs that may result from disproportionate caution, the facsimile costs will be refused.

[13] The telephone costs in the summary table attached to the affidavit supporting the CSC's bill of costs are justified by various long-distance calls. Given the location of the parties' representatives in Montréal and Québec City and the residence of affiant Jean-Baptiste Dromer in this case, these costs are considered necessary for the conduct of the action and will be allowed as claimed.

[14] The bill of costs for respondent CSC is allowed in the amount of \$1,664.11. A certificate of assessment will be issued in this amount.

"Johanne Parent"
Assessment Officer

Toronto, Ontario
August 25, 2010

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: 09-A-42

STYLE OF CAUSE: DRAGAGE VERREAULT INC. v.
CONSTRUCTION McNALLY DU QUÉBEC
INC. and THE CANADIAN SALT
COMPANY LTD.

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

PLACE OF ASSESSMENT: TORONTO, ONTARIO

ASSESSMENT OF COSTS – REASONS: ASSESSMENT OFFICER
JOHANNE PARENT

DATED: August 25, 2010

WRITTEN REPRESENTATIONS BY:

Marie-Claude Laplante FOR THE MOVING PARTY

Valérie Belle-Isle FOR THE RESPONDENT CSC

SOLICITORS OF RECORD:

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