

Federal Court of Appeal



Cour d'appel fédérale

Date: 20120503

Docket: A-200-02

Citation: 2012 FCA 138

Before: Johanne Parent, Assessment Officer

BETWEEN:

CHARLOTTE RHÉAUME

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Dealt with in writing without appearance of the parties.

Certificate issued at Toronto, Ontario, on May 3, 2012.

REASONS FOR ASSESSMENT BY: JOHANNE PARENT, Assessment Officer

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REASONS FOR ASSESSMENT

JOHANNE PARENT, Assessment Officer

[1] On May 15, 2003, the Court dismissed the appeal from the decision by the Honourable Justice Pelletier dated March 25, 2002, with costs. On July 4, 2003, the respondent filed his bill of costs with the Court. On January 16, 2012, the respondent sent a letter to the Registry stating as follows: [TRANSLATION] “Upon reading the minute book of docket A-200-02 of the Federal Court, we have realized that a bill of costs filed on July 4, 2003, was never assessed”. Upon receipt of this letter, directions were issued and served on January 24, 2012, informing the parties that the costs would be assessed in writing and setting the deadlines for the filing of submissions.

[2] On February 21, 2012, the appellant sent the Registry a letter and written submissions requesting that directions be issued in light of the Court's decision in *Markevich v. Canada* (2001 FCA 144) to cancel the respondent's bill of costs because it was statute-barred. In reply, the following directions were sent to the parties on February 24, 2012:

[TRANSLATION]

. . . For reasons that are unknown, the bill of costs was not dealt with when it was filed, and it was only upon receipt of the respondent's letter on January 16, 2012, that the matter was brought to the attention of an assessment officer.

As was indicated at paragraph 14 of *Fournier Pharma Inc. v Canada* (2007 FC 433), and paragraph 19 of *Nature's Path Foods Inc. v Country Fresh Enterprises Inc.* (2007 FC 116), and in *Urbandale Realty Corp. v Canada* (2008 FCA 167), there is no time limit for filing or processing a bill of costs before the federal courts. Particular reference is made to *Urbandale*, where the assessment officer reviewed *Markevitch* in light of the cost assessment.

Although considerable time elapsed before the respondent brought this situation to the Court's attention, there is no time limit in the *Federal Courts Rules* for the assessment of costs.

Consequently, the respondent's bill of costs will be assessed, and, to that effect, the Assessment Officer has instructed that:

(a) since the submissions filed by the appellant on February 21 dealt mainly with the time limit, the appellant may serve and file any additional documents in reply to the bill of costs no later than March 16, 2012;

(b) the respondent may serve and file any reply documents no later than April 5, 2012.

The parties are also requested to address in their submissions the impact of the present situation on the assessment of Item 26 of Tariff B.

[3] No written submissions were received from the parties in response to these directions. I will therefore analyze the bill of costs taking into account the documents already in the Court record, including the appellant's submissions dated February 21, 2012, regarding the time limit.

[4] The appellant states that eight years and eight months elapsed between the delivery of the judgment and the sending of the bill of costs on January 24, 2012, and that, consequently, she cannot validate the expenses submitted. In support of this, she relies on subsection 39(1) of the *Federal Courts Act* and section 32 of the *Crown Liability and Proceedings Act*. She also argues as follows:

[TRANSLATION]

In the absence of a provision dealing with the time limit for the Federal Court of Appeal, the applicable time limit is that provided at article 2925 of the C.C.Q. [Civil Code of Québec]. Since this is an action to enforce a personal right of which the prescriptive period is not otherwise established, the time limit is three years within the date of the judgment dated May 15, 2003. The time limit for recovering costs expired on May 15, 2006, and the debt is no longer owed to the Attorney General of Canada.

[5] Section 39 of the *Federal Courts Act* states as follows:

39. (1) Except as expressly provided by any other Act, the laws relating to prescription and the limitation of actions in force in a province between subject and subject apply to any proceedings in the Federal Court of Appeal or the Federal Court in respect of any cause of action arising in that province.

(2) A proceeding in the Federal Court of Appeal or the Federal Court in respect of a cause of action arising otherwise than in a province shall be taken within six years after the cause of action arose.

39. (1) Sauf disposition contraire d'une autre loi, les règles de droit en matière de prescription qui, dans une province, régissent les rapports entre particuliers s'appliquent à toute instance devant la Cour d'appel fédérale ou la Cour fédérale dont le fait générateur est survenu dans cette province.

(2) Le délai de prescription est de six ans à compter du fait générateur lorsque celui-ci n'est pas survenu dans une province.

[6] Section 32 of the *Crown Liability and Proceedings Act* stipulates:

32. Except as otherwise provided in this Act or in any other Act of Parliament, the laws relating to prescription and the limitation of actions in force in a province between subject and subject apply to any proceedings by or against the Crown in respect of any cause of action arising in that province, and proceedings by or against the Crown in respect of a cause of action arising otherwise than in a province shall be taken within six years after the cause of action arose.

32. Sauf disposition contraire de la présente loi ou de toute autre loi fédérale, les règles de droit en matière de prescription qui, dans une province, régissent les rapports entre particuliers s'appliquent lors des poursuites auxquelles l'État est partie pour tout fait générateur survenu dans la province. Lorsque ce dernier survient ailleurs que dans une province, la procédure se prescrit par six ans.

[7] Like the appellant, I understand from the two preceding provisions that, in the absence of any other prescription or limitation provided for in the *Federal Courts Act* or the *Federal Courts Rules* and considering that the causes of the present matter arose in the province of Quebec, the rules set out in the *Civil Code of Québec* govern the appellant's rights relating to prescription and the limitation of the present matter involving the Attorney General of Canada.

[8] Article 2925 of the *Civil Code of Québec*, as relied on by the appellant in her submissions, states as follows:

2925. An action to enforce a personal right or movable real right is prescribed by three years, if the prescriptive period is not otherwise established.

2925. L'action qui tend à faire valoir un droit personnel ou un droit réel mobilier et dont le délai de prescription n'est pas autrement fixé se prescrit par trois ans.

[9] I note that the three-year time limit provided for here applies to actions and therefore seems inapplicable to a bill of costs following a judgment. Moreover, if section 2925 of the

C.C.Q. did apply, the time limit for the impugned bill of costs could essentially not begin before the date of the Court's judgment awarding costs to the respondent in May 2003. Regarding the filing of the bill of costs, the proof of service, found in the Court record, indicates that the appellant was served by the bailiff on June 26, 2003. This last factor leads me to conclude that the time limit was interrupted on that date.

[10] Moreover, I find that, in the matter under review, if a time limit under the *Civil Code of Québec* did apply, it would be the 10-year time limit provided in article 2924 of the C.C.Q.:

2924. A right resulting from a judgment is prescribed by 10 years if it is not exercised.

2924. Le droit qui résulte d'un jugement se prescrit par 10 ans s'il n'est pas exercé.

[11] In light of the above, since the appellant did not use the additional time offered in the directions issued on February 24, 2012, to file additional submissions, I will therefore assess the respondent's bill of costs taking into account the appellant's submissions dated February 21, 2012, and the affidavit of Lyne Lasalle filed in support of the bill of costs. In her submissions, with the exception of the arguments on certain disbursements and on the time limit affecting the bill of costs, the appellant did not submit any documents to help clarify her position on the assessable services and assist me in my decision in that regard. The absence of submissions from the appellant regarding the assessable services leaves the bill of costs unopposed, and, as my colleague wrote at paragraph 2 of *Dahl v Canada*, 2007 FC 192, ". . . the *Federal Courts Rules* do not contemplate a litigant benefiting by an assessment officer stepping away from a position of neutrality to act as the litigant's advocate in challenging given items in a bill of costs".

However, it must be noted that every service claimed must be examined in light of the fact that any service that does not match the Tariff or the Court's judgment cannot be certified.

[12] In light of the above, I have reviewed all the assessable services, and the units claimed under Column III of Tariff B of the *Federal Courts Rules* for preparing the memorandum of fact and law (Item 19), the counsel fees on hearing (Item 22), services after judgment (Item 25), the assessment of costs (Item 26) and the preparation of the appearance (Item 27) shall be allowed as requested.

[13] In Part II of her submissions dated February 21, the appellant objects to the disbursements for bailiff fees, photocopies and printers, arguing that she cannot validate the items or the fees because of the [TRANSLATION] "delay in submitting these invoices". The appellant notes, for example, that an invoice from St-Joseph Digital Solutions for the printing of the book of authorities was inadmissible because of inconsistencies in the dates mentioned there.

[14] As I mentioned earlier in this decision, it is not my opinion that there was a time limit for the assessment of the bill of costs submitted by the respondent, and, consequently, the reasonable expenses incurred in the context of this proceeding will be assessed. The justification of the disbursements claimed in the bill of costs is accompanied by receipts and invoices supporting the affidavit of Lyne Lasalle. The record reveals that this affidavit together with supporting documents was served on the appellant on two occasions. It was therefore up to the appellant to cross-examine the affiant or at least to verify in the Court record any item requiring further

information, such as the number of documents produced and filing and service dates. As for the invoice from St-Joseph Digital Solutions, the appellant's submissions are fair. However, given the information found in the invoice and in the order form, which is also appended to Ms. Lasalle's affidavit, it is my opinion that this is merely a clerical error that does not invalidate the document.

[15] In the absence of any other opposing arguments, I find that the amounts claimed were necessary expenses for the conduct of this proceeding. They were warranted and reasonable and will therefore be allowed as requested.

[16] The respondent's bill of costs is allowed at \$2,590.45.

"Johanne Parent"
Assessment Officer

Certified true translation
Johanna Kratz, Translator

FEDERAL COURT OF APPEAL
SOLICITORS OF RECORD

DOCKET: A-200-02

STYLE OF CAUSE: CHARLOTTE RHÉAUME v ATTORNEY
GENERAL OF CANADA

**WRITTEN ASSESSMENT OF COSTS WITHOUT APPEARANCE OF THE
PARTIES**

REASONS FOR ASSESSMENT BY: JOHANNE PARENT, Assessment Officer

DATED: May 3, 2012

WRITTEN SUBMISSIONS:

Charlotte Rhéaume FOR THE APPELLANT (REPRESENTING
HERSELF)

Diane Pelletier FOR THE RESPONDENT

SOLICITORS OF RECORD:

N/A FOR THE APPELLANT (REPRESENTING
HERSELF)

MYLES J. KIRVAN FOR THE RESPONDENT
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