

Federal Court of Appeal



Cour d'appel fédérale

Date: 20210308

Docket: A-454-16

Citation: 2021 FCA 48

Present: GARNET MORGAN, Assessment Officer

BETWEEN:

MANSOUR BOROUMEND

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Assessment of costs without appearance of the parties.
Certificate of Assessment delivered at Toronto, Ontario, on March 08, 2021.

REASONS FOR ASSESSMENT BY: GARNET MORGAN, Assessment Officer

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REASONS FOR ASSESSMENT

GARNET MORGAN, Assessment Officer

[1] This is an assessment of costs pursuant to a Judgment of the Federal Court of Appeal dated December 12, 2017, wherein the Appellant's appeal was "dismissed with costs."

[2] Further to the Court's Judgment, costs will be assessed in accordance with Rule 407 of the *Federal Courts Rules*, SOR/98-106 (*FCR*), which states:

407. Assessment according to Tariff B - Unless the Court orders otherwise, party-and-party costs shall be assessed in accordance with column III of the table to Tariff B.

[3] On February 27, 2020, the Respondent filed a Bill of Costs.

[4] As a result of the COVID-19 pandemic and the suspension of the filing deadlines for court documents during the spring of 2020, by the Federal Court of Appeal, a direction was issued to the parties on June 19, 2020, providing the filing dates for documents for the assessment of costs.

[5] Subsequent to the direction being issued, the Respondent submitted a letter dated August 31, 2020, to the court registry advising that the issue of costs had been settled between the parties and that an assessment of costs was no longer required.

[6] On November 10, 2020, the Respondent submitted a letter to the court registry advising that the parties were not able to settle the issue of costs and requesting that the assessment of costs be resumed. On November 10, 2020, a direction was issued to the parties resuming the assessment of costs and providing the filing dates for documents.

[7] The following costs material was filed by the parties for this assessment of costs: on February 27, 2020, the Respondent filed a Bill of Costs and an Affidavit of Disbursements of Sharon Thurman, sworn on February 14, 2020. On November 10, 2020, the Respondent filed an Amended Bill of Costs. No responding material was filed by the Appellant.

I. Preliminary Issue

[8] My review of the court record shows that the Appellant did not file any responding material related to the Respondent's request for an assessment of costs. The absence of any responding material from the Appellant addressing the Respondent's claims for costs has left the Respondent's Bill of Costs substantially unopposed. In *Dahl v. Canada*, 2007 FC 192, at paragraph 2, the Assessment Officer states:

Effectively, the absence of any relevant representations by the Plaintiff, which could assist me in identifying issues and making a decision, leaves the bill of costs unopposed. My view, often expressed in comparable circumstances, is that 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, the assessment officer cannot certify unlawful items, i.e. those outside the authority of the judgment and the Tariff. I examined each item claimed in the bill of costs and the supporting materials within those parameters. Certain items warrant my intervention as a function of my expressed parameters above and given what I perceive as general opposition to the bill of costs.

[9] Further to the decision in *Dahl*, in *Carlile v. Canada*, [1997] F.C.J. No. 885, at paragraph 26, the Assessment Officer states:

[...] Taxing Officers are often faced with less than exhaustive proof and must be careful, while ensuring that unsuccessful litigants are not burdened with unnecessary or unreasonable costs, to not penalize successful litigants by denial of indemnification when it is apparent that real costs were indeed incurred.

[10] Further to the decisions in *Dahl* and *Carlile*, although there is an absence of responding material from the Appellant challenging the individual assessable services or disbursements claimed by the Respondent for this particular assessment of costs, as an Assessment Officer, I have an obligation to ensure that any claims that are allowed are not "unnecessary or unreasonable". In addition to the Respondent's costs material, the court record, the *FCR* and any

relevant jurisprudence will be utilized to assess the costs of the Respondent to ensure that they were necessary and are reasonable.

II. Assessable Services

[11] The Respondent has claimed \$2,450.00 in assessable services.

[12] I have reviewed the Respondent's costs material in conjunction with the court record, the *FCR* and any relevant jurisprudence and I have determined that the assessable services claimed by the Respondent were necessary and are reasonable. The assessable services are allowed as claimed in the total amount of \$2,450.00.

III. Disbursements

[13] The Respondent has claimed \$347.54 in disbursements.

[14] I have reviewed the Respondent's costs material in conjunction with the court record, the *FCR* and any relevant jurisprudence and I have determined that the Respondent's claim for process serving was necessary and is reasonable. Specifically, \$72.86 is allowed for process serving.

[15] The Respondent's claims for photocopying have some issues to look into and as a result, they will be reviewed below.

[16] My review of the Respondent's costs material found that there is an absence of adequate particularization regarding the Respondent's claims for photocopying. Specifically, three copies of the Appeal Book and the Appellant's Memorandum of Fact and Law were duplicated by the Respondent. It is unclear from the Respondent's costs material why the Respondent required three copies of these documents. The Appellant is only responsible for the costs related to the photocopying (printing) of one copy of the Appeal Book and one copy of the Appellant's Memorandum of Fact and Law for the use of the Respondent, as it appears from the court record that hard copies of these documents were not provided to the Respondent. Any additional copies that were made of these documents was at the discretion of the Respondent. In *Merck & Co. v. Apotex*, 2008 FCA 371, at paragraph 14, the Court states the following regarding Assessment Officers having limited material available:

In view of the limited material available to assessment officers, determining what expenses are "reasonable" is often likely to do no more than rough justice between the parties and inevitably involves the exercise of a substantial degree of discretion on the part of assessment officers.

[17] In *Bujnowski v. Canada*, [2010] FCJ No 346, at paragraph 34, the Assessment Officer states the following regarding the reimbursement of additional copies:

The Respondent has submitted receipts for all the photocopies prepared and these seem to be reasonable in the circumstances of this case. There are however two items which cannot be allowed, the disbursement to Ethical Solutions for copying the Appellant's Motion Record and the disbursement to Ikon Office Solutions for copying the Appellant's Memorandum of Fact and Law. These documents were provided to the Respondent by the Appellant. If the Respondent required additional copies the Appellant should not be required to reimburse them for the copies.

[18] Further to the *Merck* and *Bujnowski* decisions, in the absence of adequate particularization from the Respondent regarding the need for additional copies or a direction or

order of the Court, specifying that the Respondent may claim additional photocopies; I have determined that only one copy of the Appeal Book and the Appellant's Memorandum of Fact and Law will be allowed for reimbursement. Specifically, \$20.04 is allowed for the photocopying of the Appeal Book and \$3.62 is allowed for the photocopying of the Appellant's Memorandum of Fact and Law.

[19] I have reviewed the remaining claims for photocopies for the Respondent's Memorandum of Fact and Law and the Joint Book of Authorities and I find that these claims are adequately supported by the Respondent's costs material and the court record and that they were necessary and are reasonable. Specifically, \$12.92 is allowed for the photocopying of the Respondent's Memorandum of Fact and Law and \$190.79 is allowed for the photocopying of the Joint Book of Authorities.

[20] The total amount allowed for the Respondent's disbursements is \$300.23.

IV. Conclusion

[21] For the above Reasons, the Respondent's Bill of Costs is assessed and allowed in the total amount of \$2,750.23. A Certificate of Assessment will be issued for \$2,750.23, payable by the Appellant to the Respondent.

"Garnet Morgan"
Assessment Officer

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-454-16

STYLE OF CAUSE: MANSOUR BOROUMEND v.
HER MAJESTY THE QUEEN

**MATTER CONSIDERED AT TORONTO, ONTARIO WITHOUT PERSONAL
APPEARANCE OF THE PARTIES**

REASONS FOR ASSESSMENT BY: GARNET MORGAN, Assessment Officer

DATED: MARCH 8, 2021

WRITTEN SUBMISSIONS BY:

John Buote
Adam Z. Serota

FOR THE APPELLANT

Rishma Bhimji

FOR THE RESPONDENT

SOLICITORS OF RECORD:

BRS Tax Lawyer, LLP
Toronto, Ontario

FOR THE APPELLANT

Attorney General of Canada
Toronto, Ontario

FOR THE RESPONDENT