

Federal Court



Cour fédérale

Date: 20150213

Docket: T-1752-06

Citation: 2015 FC 181

Ottawa, Ontario, February 13, 2015

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

GARY SAUVE

Plaintiff

and

**HER MAJESTY THE QUEEN
IN RIGHT OF CANADA,
MARC FRANCHE (RCMP),
LARRY TREMBLAY (RCMP),**

Defendants

SUPPLEMENTARY JUDGMENT AND REASONS

[1] These are my supplementary reasons concerning the outstanding issue of costs in this proceeding. In my Judgment and Reasons issued on January 16, 2015 I dismissed Mr. Sauve's action against the Defendants and reserved on costs pending further submissions from the parties. The Defendants' submissions were received on January 23, 2015. No submissions were

forthcoming from the Plaintiff save for an indication from his counsel that she had no instructions to respond.

[2] The Defendants were wholly successful in defending this action and they are entitled to their reasonable costs. Counsel for the Defendants has tendered a Bill of Costs claiming \$27,440.00 as a contribution to legal costs and \$16,402.99 for disbursements.

[3] The Defendants refer to the factors listed in Rule 400 *Federal Courts Rules*, SOR/98-106, in support of their claim to legal costs and they rely, in particular, on an oral offer to settle that appears to have been made to Mr. Sauve's legal counsel at some point in 2013. According to Ms. Letourneau's letter to the Court dated July 4, 2013, Mr. Sauve rejected an unspecified global offer to resolve all of his outstanding litigation against the federal Crown. No terms of the proposed settlement have been presented to the Court. This is not particularly surprising inasmuch as the settlement offer was never reduced to writing.

[4] I am not prepared to credit the Defendants for their attempt to settle with Mr. Sauve. For very good reasons, including the avoidance of more disagreement, Rule 400 permits the Court to consider only "written" offers of settlement. An attempt to settle multiple legal proceedings with a single offer is also not particularly helpful where the costs of only one proceeding need to be assessed.

[5] I am also concerned about the Defendants' claims to costs in connection with a variety of motions that were filed by one or the other dating back as far as 2007.

[6] Almost all of the early motions in this proceeding were concluded by Orders where no award of costs was made. It is not open to the Court to revisit those matters and to award costs where none were ordered at the time: see *Exeter v Canada*, 2013 FCA 134 at para 14.

[7] The Defendants also seek costs in connection with their motion to strike Mr. Sauve's Statement of Claim. Justice Anne Mactavish awarded costs of that motion against Mr. Sauve of only \$250.00. Those costs appear to have been paid by Mr. Sauve. On appeal that Order was reversed, in part, with an award of disbursements to Mr. Sauve. In those circumstances, a claim to legal costs for that motion is not justified.

[8] The claim to costs for the Defendants' uncontested motion for an extension to file a Defence is also not justified.

[9] The Defendants' claim for disbursements will need to be verified on an assessment. One item that stands out is a claim to witness fees of almost \$7,000.00. This may relate, in large measure, to the cost of travel for one RCMP witness who attended from Panama where he is now posted. If that is the case, the claim to reimbursement will be recoverable at the lesser of the actual cost of travel or a regular economy airfare from Panama to Ottawa. This item is only recoverable in the event that the witness in question was not otherwise required to be in Ottawa for other business-related reasons.

[10] Having regard to the above-noted adjustments, I award costs to the Defendants in the amount of \$17,000.00 along with their reasonable disbursements to be assessed.

JUDGMENT

THIS COURT'S JUDGMENT is that the Defendants are awarded costs of \$17,000.00 with their reasonable disbursements to be assessed.

"R.L. Barnes"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1752-06

STYLE OF CAUSE: GARY SAUVE
v
HER MAJESTY THE QUEEN, IN RIGHT OF
CANADA,, MARC FRANCHE (RCMP),, LARRY
TREMBLAY (RCMP), LOUIS DORAIS (RCMP)

Submissions CONSIDERED AT OTTAWA, ONTARIO

SUPPLEMENTARY JUDGMENT AND REASONS: BARNES J.

DATED: FEBRUARY 13, 2015

APPEARANCES:

Cheryl Letourneau

FOR THE PLAINTIFF

Helene Robertson
Patrick Bendin

FOR THE DEFENDANTS

SOLICITORS OF RECORD:

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FOR THE DEFENDANTS