

Federal Court



Cour fédérale

Date: 20200402

Docket: T-1642-16

Citation: 2020 FC 480

Ottawa, Ontario, April 2, 2020

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

FLUID ENERGY GROUP LTD.

**Plaintiff/
Defendant by Counterclaim**

and

**MUD MASTER DRILLING FLUID SERVICES LTD.,
HEARTLAND ENERGY GROUP LTD.,
a corporation incorporated in Seychelles,
HEARTLAND ENERGY GROUP LTD.,
a corporation incorporated in Nevada, and
ALCHEM DRILLING FLUID SERVICE LTD.**

**Defendants/
Plaintiffs by Counterclaim**

ORDER AND REASONS

UPON MOTION made by the Defendants pursuant to Rule 369 of the *Federal Courts Rules*, SOR/98-106, to reconsider the Order made February 12, 2020 [the Appeal Order],

pursuant to Rule 397(2), on the ground that “Clerical mistakes, errors or omissions in an order may at any time be corrected by the Court;”

AND UPON considering the motion records filed by the parties and the written submissions therein;

AND UPON determining that this motion must be dismissed for the reasons set forth in the following Endorsement;

ENDORSEMENT

[1] The Defendants submit that in rendering the Appeal Order the Court overlooked that the Plaintiff had not appealed the entire Order of the Prothonotary and/or accidentally omitted to state that the Order of the Prothonotary was being set aside only with respect to the portions that were appealed. Specifically, they submit that the costs portion of the Prothonotary’s Order was not appealed.

[2] The Order of the Prothonotary had two components: (1) she dismissed the Plaintiff’s motion to remove the Counsel Eyes Only designation from the documents listed therein, and (2) she ordered the Plaintiff to pay the Defendants their costs of the motion at the mid-point of Column V of the Tariff, together with all reasonable disbursements.

[3] The Plaintiff appealed that Order and its Notice of Motion recited that it was seeking “An order allowing this appeal and setting aside the Order of Madam Prothonotary Aylen, which

denied Fluid's motion to remove the designation of "Confidential Information – Counsel's Eyes Only" – (CEO) from the following documents ...” and its costs of the motion.

[4] The Court on appeal allowed the appeal finding that the Prothonotary had applied the wrong legal test. The Court thus set aside the Order of the Prothonotary. The Court then considered afresh the motion to remove the CEO Designations and, applying the correct test, dismissed the Plaintiff's motion. The Appeal Order set aside the Order of Prothonotary Aylen, dismissed the Plaintiff's motion, and awarded a single set of costs to the Defendants.

[5] This motion must be dismissed. First, when an Order is appealed, seeking that it be set aside, the remedy requested here by the Plaintiff, all of the Order is under consideration, and there is no requirement that the costs portion be specifically mentioned in the Notice of Motion.

[6] Second, the Court was alive to the award of costs issued by the Prothonotary and, the Appeal Order setting aside her Order, set aside all of her Order, including the costs portion. Nothing was overlooked or accidentally omitted and reconsideration is not available.

[7] The Plaintiff is entitled to its costs of this motion.

ORDER IN T-1642-16

THIS COURT ORDERS that:

1. The motion is dismissed; and
2. The Plaintiff is entitled to its costs of this motion.

"Russel W. Zinn"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-1642-16

STYLE OF CAUSE: FLUID ENERGY GROUP LTD. v MUD MASTER
DRILLING FLUID SERVICES LTD. ET AL

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO, PURSUANT TO
RULE 369 OF THE *FEDERAL COURTS RULES***

ORDER AND REASONS: ZINN J.

DATED: APRIL 2, 2020

WRITTEN SUBMISSIONS BY:

Trevor McDonald

FOR THE PLAINTIFF/
DEFENDANT BY COUNTERCLAIM

Jonathan Roch

FOR THE DEFENDANTS/
PLAINTIFFS BY COUNTERCLAIM

SOLICITORS OF RECORD:

Burnet, Duckworth & Palmer LLP
Barristers & Solicitors
Calgary, Alberta

FOR THE PLAINTIFF/
DEFENDANT BY COUNTERCLAIM

MBM Intellectual Property Law LLP
Barristers & Solicitors
Ottawa, Ontario

FOR THE DEFENDANTS/
PLAINTIFFS BY COUNTERCLAIM