

Federal Court

Cour fédérale

Date: 20100728

Docket: T-1599-99

Citation: 2010 FC 789

BETWEEN:

FERME AVICOLE KIAMIKA INC.

Plaintiff by Counterclaim

and

HER MAJESTY THE QUEEN

Defendant by Counterclaim

ASSESSMENT OF COSTS – REASONS

DIANE PERRIER, ASSESSMENT OFFICER

[1] On July 12, 2006, the Federal Court struck the claim from the Plaintiff by Counterclaim (“the Plaintiff”) and dismissed the action with costs. Following that order, the Defendant by Counterclaim (“the Defendant”) filed a bill of costs on April 6, 2010, in this case as well as in case T-1374-00, since both cases were heard at the same time and requested that their costs be assessed without personal appearance of the parties in both cases.

[2] On April 30, 2010, a directive was sent to the parties setting a deadline for filing written submissions. On May 5, 2010, the envelope sent to the Plaintiff was returned to us marked “Left without leaving an address”. Further to a call to the Defendant, the latter gave us a new address for the Plaintiff’s counsel. On May 21, 2010, a directive was sent to the parties, setting a new deadline. The Plaintiff’s counsel contacted the Registry to inform us that he did not intend to submit written submissions to contest the bill of costs. I am therefore prepared to proceed with assessing the bill of costs on the basis of the documentation on file.

[3] In this case, the Defendant is claiming the following counsel fees: item 2 – preparation and filing of a defence (7 units), item 5 – preparation of a contested motion (7 units), item 6 – appearance on a motion on June 28, 2006 (3 units x 4.17 hours), item 10 – preparation for a pre-trial conference including the memorandum (3 units), item 11 – attendance at the pre-trial conference held December 13, 2000 (25 minutes), March 23, 2001 (25 minutes), June 15, 2001 (10 minutes), July 4, 2001 (7 minutes), September 20, 2001 (10 minutes), January 9, 2002 (20

minutes), April 3, 2002 (10 minutes), September 11, 2002 (10 minutes), January 15, 2003 (15 minutes), June 18, 2003 (16 minutes), December 17, 2003 (20 minutes), September 15, 2004 (10 minutes), March 16, 2005 (15 minutes), April 15, 2005 (10 minutes), December 16, 2005 (10 minutes) and April 13, 2006 (20 minutes) for a total duration of 233 minutes, item 25 – services judgement not otherwise specified (1 unit) and item 26 – assessment of costs (6 units).

[4] The counsel fees are all allowed, except for items 10, 11 and 26. Item 10 cannot be allowed since no pre-trial memorandum under section 262 of the *Federal Courts Rules* was filed with the Court. Item 11 cannot be allowed, since the Court's orders regarding the various management and pre-trial conferences are silent as to costs; therefore, the assessment officer has no discretion to allow that item. Item 26 was allowed in 2 units, since the assessment is uncontested and does not appear complicated to me. I also adjusted the unit value at April 1, 2009 to \$130 because the Defendant's bill of costs was filed after that date, and I therefore made an adjustment in the calculation of the costs. Counsel fees are allowed in the amount of \$3,836.30.

[5] The outlays for photocopying and bailiff costs are allowed in the amount of \$542.11 because they seem reasonable to me and necessary for conducting the action, and are uncontested and supported by affidavit. Mr. Hudon's travel expenses in the amount of \$263.05 were not allowed because travel expenses were already allowed in case No. T-1374-00

for the hearing on June 28, 2006, and there is no order on file covering the expenses of a second attorney.

[6] The Defendant's bill of costs filed in the amount of \$5,637.16 is assessed and allowed in the amount of \$4,378.41. A certificate of assessment will be issued for that amount.

MONTREAL, QUEBEC

July 28, 2010

“Diane Perrier”

DIANE PERRIER
ASSESSMENT OFFICER

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-1599-99

STYLE OF CAUSE: FERME AVICOLE KIAMIKA INC.
v. HER MAJESTY THE QUEEN

ASSESSMENT OF COSTS IN WRITING

PLACE OF ASSESSMENT: Montreal, Quebec

REASONS OF DIANE PERRIER, ASSESSMENT OFFICER

DATE OF REASONS: July 28, 2010

SOLICITORS OF RECORD:

Marc-André Simard

Mont-Laurier, QuEbec

FOR THE PLAINTIFF BY
COUNTERCLAIM

Myles J. Kirvan

Deputy Attorney General of Canada
Montreal, Quebec

FOR THE DEFENDANT BY
COUNTERCLAIM