

Federal Court



Cour fédérale

Date: 20100830

Docket: T-120-10

Citation: 2010 FC 862

[ENGLISH TRANSLATION]

BETWEEN:

LES PROMOTIONS SPORTSCENE INC./INTERBOX

Plaintiff

and

RESTAURANT BRASSERIE AU VIEUX PUITTS

OZONE HÔTEL-BARS INC.

**9183-7583 QUEBEC INC.
doing business as
Café Bar Le Corail**

**9177-3804 QUÉBEC INC.
doing business as
BOSTON PIZZA**

DELI 7 BAR TEDDYS INC.

AUX VERRES STÉRILISÉS INC.

**2426 - 3857 QUÉBEC INC.
doing business as
TAVERNE INSPECTEUR ÉPINGLE**

**YVON LAPOINTE
doing business as
BAR LA T.S. formerly
TAVERNE DES SPORTS ENR.**

Defendants

ASSESSMENT OF COSTS – REASONS

DIANE PERRIER, ASSESSMENT OFFICER

[1] On April 30, 2010, the Federal Court issued a judgment by default against the defendant Deli & Bar Teddys Inc. indicating that costs were awarded based on column V of Tarif B.

[2] On June 3, 2010, the plaintiff filed its bill of costs against the defendant Deli & Bar Teddys Inc. and asked that the bill of costs be assessed in writing. On June 10, 2010, a directive was issued setting the deadline for the parties to file written submissions. On June 28, 2010, the envelope sent to the defendant was returned to us with the indication moved/address unknown. Counsel for the plaintiff was contacted and provided us with the address of the two owners. On July 5, 2010, a second directive was issued setting a new deadline for filing written submissions. On July 21, 2010, we received a letter from the trustee advising us that the defendant had made an assignment of its assets and attached a notice of stay of proceedings in the Court case.

[3] Following the trustee's letter, can the assessment officer proceed with the assessment of the bill of costs? It is appropriate to cite *Solovsky v. Canada*, [1976] F.C.J. No. 186, at paragraph 20, the Honourable Justice Addy states that: "... neither the ability to pay nor the difficulty of collection should be a deciding factor but, on the contrary, the awarding or refusal of costs should be based on the merits of the case." I am of the view that the assessment officer had no other choice but to assess the costs. As well, because the Court awarded expenses in this case and under Rule 405 of the

Federal Court Rules, the costs are assessed by the assessment officer. The role of the assessment officer is therefore to quantify the costs.

[4] The plaintiff is seeking the minimum under column V for all services to be assessed, therefore those are all awarded as claimed. However, the services to be assessed for the motion were awarded under item 4 in the table for Tariff B, under B, Motions, not under item 21(a) under F, Appeals to the Federal Court of Appeal. The services to be assessed from the plaintiff are awarded in the amount of \$1,614.11 (\$1,430 + \$71.50 (GST) + \$112.61 (QST)).

[5] The Registry fees of \$50 for the declaration are awarded as such. The disbursements of \$33.57 for service of the declaration are awarded as such because I find them reasonable and necessary for the conduct of business and proved by affidavit.

[6] The bill of costs from the plaintiff submitted at \$1,697.68 is assessed and awarded in that amount. An certificate of assessment will be issued in that amount.

MONTRÉAL, QUEBEC
August 20, 2010

“Diane Perrier”

DIANE PERRIER
ASSESSMENT OFFICER

FEDERAL COURT
SOLICITORS OF RECORD

COURT FILE NO. : T-120-10

STYLE OF CAUSE: LES PROMOTIONS SPORTSCENE INC./INTERBOX
v. RESTAURANT BRASSERIE AU VIEUX Puits
ET AL.

WRITTEN ASSESSMENT OF COSTS

PLACE OF ASSESSMENT: MONTRÉAL, QUEBEC

REASONS BY DIANE PERRIER, ASSESSMENT OFFICER

DATED: August 30, 2010

SOLICITORS OF RECORD:

Sylvestre & Associés
St-Hyacinthe, Quebec

for the Plaintiff