

Federal Court



Cour fédérale

Date: 20110817

Docket: T-388-84

Citation: 2011 FC 1001

Ottawa, Ontario, August 17, 2011

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

CONNOLLY CONTRACTORS LIMITED

Plaintiff

and

BEER PRECAST CONCRETE LIMITED

Defendant

AMENDED REASONS FOR ORDER AND ORDER

[1] An action was commenced by way of Statement of Claim in 1984.

[2] Ms. Elizabeth Wasiuk of the Federal Court wrote to the Law Firm of Sim, Lowman, Ashton & McKay LLP, Barristers and Solicitors, on August 8, 2011, indicating that the sum of \$2,000.00 was paid into Court on March 15, 1984 by Sim, Hughes, Ashton & McKay on behalf of the Plaintiff. Ms. Wasiuk requested that the necessary be effected for the funds tendered to be paid out of Court either to the credit of the party or to the name of the solicitors who filed the tender in trust.

[3] An attempt to review the dockets of entries at the Federal Court office was unsuccessful as this action predates only computer list.

[4] Judgment was signed by Mr. Peter A.K. Giles, Associate Senior Prothonotary, on May 4, 1987. Copy of the Judgment is contained in the Motion Record.

[5] The file was retrieved from storage and determined that Connolly Contractors Limited went into receivership in 1985. A letter was located that dated from November 29, 1985, Ernst & Whinney Inc., which indicates it is acting as Receiver and Manager for Connolly Contractors Limited.

[6] From a review of the above specific file of the Law Firm, it appears that subsequent to Connolly Contractors Limited going into receivership, the Law Firm received its instructions from Mr. Michael R. Kestenberg and/or Mr. Steven Stieber, solicitors for Connolly Contractors Limited, at Aiken, Capp, 2 St. Clair Avenue East, Toronto, M4T 2R1.

[7] A review of old accounting documents indicate that fees rendered by Sim, Hughes, Ashton & McKay LLP were paid by the Toronto Dominion Bank upon instruction from Aiken Capp.

[8] The Law Firm made various internet searches to determine if the firm of Aiken Capp still exists and now understands it was dissolved in or about 1988.

[9] Although the Law Firm was able to locate Mr. Kestenberg and requested his assistance in an attempt to locate Connolly Contractors Ltd., Mr. Kestenberg advised the Law Firm that he is not in possession of any files, nor has he any information with respect to Connolly Contractors Limited.

[10] Searches were conducted on the online service of ONcorp to ascertain if any corporate record existed, which may relate to Connolly Contractors Limited by which contact information could be provided. Subsequent to that, records did indicate that the corporation of Connolly Contractors Limited had been dissolved at the request of the Corporations Tax Branch, Ministry of Finance. No further records were found.

[11] Therefore, subsequent to all of the above, the funds are made payable to Sim, Lowman, Ashton & McKay LLP In Trust. The funds are to be deposited in the Law Firm's trust account with an application to be made to pay the funds in trust into the Law Society's Unclaimed Trust Fund; Trustee Services Department, Law Society of Upper Canada, 130 Queen Street West, Toronto, M5H 2N6.

[12] As such, the sum of \$2,000.00 plus interest which remains in the Court is to be paid out of Court to the credit of the solicitors for the Plaintiff, Sim, Lowman, Ashton & McKay LLP for the purpose specified above.

ORDER

THIS COURT ORDERS that the sum of \$2,000.00 plus interest (from May 4, 1987) which remains in Court be paid out of the Court to the credit of the solicitors for the Plaintiff, Sim, Lowman, Ashton and McKay LLP.

“Michel M.J. Shore”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-388-84

STYLE OF CAUSE: CONNOLLY CONTRACTS LIMITED v
BEER PRECAST CONCRETE LIMITED

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO
RULE 369**

**REASONS FOR ORDER
AND ORDER:** SHORE J.

DATED: August 17, 2011

WRITTEN REPRESENTATIONS BY:

Kenneth D. McKay

FOR THE PLAINTIFF

N/A

FOR THE DEFENDANT

SOLICITORS OF RECORD:

Sim, Lowman, Ashton & McKay LLP
Barristers and Solicitors
Toronto, Ontario

FOR THE PLAINTIFF

Blake, Cassels & Graydon
Toronto, Ontario

FOR THE DEFENDANT