

Federal Court



Cour fédérale

Date: 20170518

Docket: T-467-11

Ottawa, Ontario, May 18, 2017

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

VENNGO INC.

Plaintiff

and

**CONCIERGE CONNECTION INC. C.O.B. AS
PERKOPOLIS, MORGAN C. MARLOWE
AND RICHARD THOMAS JOYNT**

Defendants

ORDER

UPON reading the written submissions of the Parties with respect to costs, filed pursuant to my decision of December 3, 2015, in this matter;

AND UPON considering the merits of the action and counterclaim, as well as the success of the Defendants on all aspects of this proceeding;

AND UPON reviewing the decision of the Federal Court of Appeal, *Venngo Inc v Concierge Connection Inc*, 2017 FCA 96 [*Venngo*];

For the following reasons, I conclude that costs, inclusive of all fees and disbursements, be paid by the Plaintiff to the Defendants in a lump sum amount of **\$192,000.00** (50% of the fees from Miller Thomson LLP + 25% of the disbursements and taxes from Miller Thomson LLP) for the following reasons.

In the initial assessment of costs, I noted that the Plaintiff had failed in all of its claims against the Defendants at trial. I also found that it was appropriate to award a lump sum, in excess of the standard costs assessed in accordance with the middle of column III of Tariff B.

Although they did not submit a detailed Bill of Costs, I found that the charges presented by the Defendants were reasonable for both the work done by the predecessor firm, MacBeth & Johnson, and by Miller Thomson LLP. Further, I considered the fact that the Plaintiff unnecessarily and unreasonably complicated the proceeding, and the Defendants' offer to settle, dated October 23, 2015 (the "Offer to Settle").

Therefore, I found that it was appropriate to award a lump sum based upon the percentage of the actual costs incurred.

The Federal Court of Appeal held that the Offer to Settle did not fall within the ambit of Rule 420 of the *Federal Court Rules*, SOR/98-106, and stated that it was "impossible from the *Costs Order* to discern what role the [Offer to Settle] played in the lump sum amount awarded by the trial judge" (*Venngo* at para 91). The Federal Court of Appeal also questioned whether the amount paid to MacBeth & Johnson was relevant to the amount to be awarded, and if so, whether it was established in accordance with the principles from *Nova Chemicals Corporation v Dow Chemical Company*, 2017 FCA 25 [*Nova Chemicals*].

Although I included 50% of the total amount paid to MacBeth & Johnson in the original costs assessment—on the assumption that the majority of the amount was comprised of what appears to be reasonable fees—having considered the principles in *Nova Chemicals*, above, I find that it is appropriate to only assess the fees and disbursements charged by Miller Thomson LLP. There was insufficient evidence before me to properly establish the fees and disbursements of MacBeth & Johnson.

Therefore, I find that the Defendants are entitled to a lump sum award of fees and disbursements totalling **\$192,000.00**, which comprises the following amounts:

1. approximately 50% of legal fees charged by Miller Thomson LLP (\$167,000.00); and
2. approximately 50% of the taxes and disbursements charged by Miller Thomson LLP (\$25,000).

The Offer to Settle has no bearing on the lump sum hereby awarded.

If the Parties cannot agree on costs for the appeal, then the issue will be referred to an assessment officer for determination.

THIS COURT ORDERS that:

1. The Plaintiff shall pay the costs of \$192,000.00 to the Defendants within 30 days of the date of this Order;
2. If the Parties cannot agree on costs for the appeal, the issue will be referred to an assessment officer for determination.

"Michael D. Manson"

Judge