

BETWEEN:

Wayne Jorgenson

APPELLANT

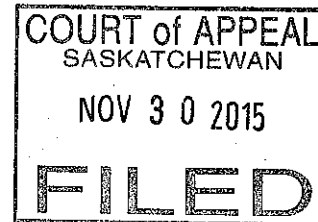
- and -

ASL Paving Ltd.

RESPONDENT

Andrew M. Mason for the Appellant
Kenneth A. Stevenson Q.C. for the Respondent

**Taxation before Melanie A. Baldwin
Registrar, Court of Appeal
November 30, 2015**



Background

On December 5, 2007, Mr. Jorgenson's appeal in CA1396 was dismissed with costs to ASL Paving Ltd. on Column 1. On June 17, 2015, Mr. Jorgenson's appeal in CACV2644 was dismissed with costs to ASL Paving Ltd. "in the usual manner." ASL Paving Ltd. took out appointments for taxation and served those appointments and proposed bills of costs on Mr. Jorgenson. A taxation hearing relating to the proposed bills of costs was held before me on November 30, 2015, with Mr. Mason and Mr. Stevenson in attendance by telephone. This fiat represents my decision in relation thereto.

Proposed Bill of Costs – CA1396

The proposed bill of costs lists fees totaling \$3250 under column 1 of the Court of Appeal Tariff of Costs. The proposed bill of costs also claims a disbursement of \$20 for the court issuing fee for the appointment for taxation. The total amount claimed is \$3270.

Proposed Bill of Costs – CACV2644

The proposed bill of costs lists fees totaling \$8225 under column 4 of the Court of Appeal Tariff of Costs. The proposed bill of costs also claims a disbursement of \$20 for the court issuing fee for the appointment for taxation. At the taxation hearing, ASL Paving Ltd. added a claim for a disbursement of \$50 paid to a process server to serve Mr. Jorgenson with the appointments and proposed bills of costs. The total amount claimed is \$8295.

Positions of the Parties

ASL Paving Ltd., through counsel, relied on the proposed bills of costs as filed with the addition of the disbursement for service noted above. In particular, ASL Paving Ltd. took the position that the appropriate tariff column to be used for CACV2644 was column 4 as the amount in issue in the action between the parties exceeded \$300,000.

Mr. Jorgenson, through counsel, took no issue with the amounts claimed on the proposed bill of costs in CA1396. On CACV2644, Mr. Jorgenson took the position that the amount in issue was not entirely clear and left the matter of the appropriate tariff column to my discretion as taxation officer. Counsel for Mr. Jorgenson did not object to any of the items claimed on the proposed bill of costs or to the service disbursement added by ASL Paving Ltd. at the taxation hearing.

Issue

I have reviewed both proposed bills of costs and agree with counsel that the items claimed, including the disbursement for service, are appropriate. The issue to be determined is the appropriate tariff column to be used for CACV2644.

Analysis

The Court of Appeal Rules do not give any specific direction about how to determine the appropriate tariff column for an appeal where monetary relief is involved. If no monetary relief is involved in an appeal, the appropriate column is column 2 (Rule 54(1)(b) of *The Court of Appeal Rules*). The practice followed in the past, when assessing costs payable by an unsuccessful appellant, has been to determine whether monetary relief is involved and, if so, the amount of monetary relief by reviewing the notice of appeal and appellant factum.

In CACV2644, Mr. Jorgenson appealed a decision of Acton J. dismissing his action against ASL Paving Ltd. In the Court of Queen's Bench before Acton J., both parties agreed that "the issue of damages would require a trial" and therefore was "not before the court."

In his notice of appeal, Mr. Jorgenson asks for judgment on liability and for the matter to be returned to the Court of Queen's Bench to determine damages. In the appellant factum filed by counsel for Mr. Jorgenson, he repeats his request for judgment on liability only. I conclude that Mr. Jorgenson's appeal in CACV2644 involved non-monetary relief and that the appropriate tariff column is therefore column 2. Had Mr. Jorgenson been successful on appeal and had the Court of Queen's Bench subsequently determined damages, either party could have appealed the decision on damages. That appeal would have involved monetary relief.

There is one final matter to be addressed in relation to the proposed bill of costs on CACV2644. The court file discloses that, on June 30, 2015, ASL Paving Ltd. incurred a \$20 disbursement for the court's fee for issuing a formal judgment on this appeal. This amount should properly be added to the proposed bill of costs.

Conclusion

The proposed bills of costs will therefore be taxed as follows:

CA1396

Taxed on: \$ nil
Taxed off: \$ nil

The proposed bill of costs on CA1396 is taxed and allowed at \$3270.

CACV2644

Taxed on: \$ 70 (disbursements for service and court fee for issuing judgment)
Taxed off: \$ 4325 (\$75 for item 3, \$3000 for item 8, \$500 for item 9, \$200 for item 10, \$200 for item 11, \$200 for item 12, \$100 for item 13 and \$50 for item 14 to reflect column 2 rather than column 4)

The proposed bill of costs on CACV2644 is taxed and allowed at \$3990.

The total costs payable by Mr. Jorgenson to ASL Paving Ltd. amount to \$7260.

Counsel for ASL Paving Ltd. may prepare and file a Certificate of Taxation of Costs to this effect (in Form 11d) for issuance if necessary for enforcement purposes.

DATED at Regina, Saskatchewan, this 30th day of November, 2015.



REGISTRAR – COURT OF APPEAL