

BETWEEN:

John Den Hollander

APPELLANT

- and -

Tiger Courier Inc.

RESPONDENT

Michael W. Owens for the Appellant
Dustin L. Gillanders for the Respondent

**Taxation before Melanie A. Baldwin
Registrar, Court of Appeal
October 8, 2015**

Background

On January 24, 2014, this appeal was allowed, the lower court decision was set aside and the appellant was awarded damages and his costs of the trial and of the appeal. The appellant took out an appointment for taxation and served that appointment, a proposed bill of costs and an affidavit of disbursements on the respondent. A taxation hearing relating to the proposed bill of costs was held before me on October 8, 2015, with Mr. Owens and Mr. Gillanders in attendance by telephone. This fiat represents my decision in relation thereto.

Proposed Bill of Costs

The proposed bill of costs lists fees totaling \$3050 under column 1 of the Court of Appeal Tariff of Costs. The proposed bill of costs also claims disbursements totaling \$1598.40, composed of \$310 in court filing/issuing fees, \$1192.80 for photocopying, \$72.30 for binding supplies and \$23.30 for courier charges. The total amount claimed is \$4648.40.

Positions of the Parties

Mr. Owens, on behalf of the appellant, relied on the proposed bill of costs as filed with one exception. The proposed bill of costs includes a \$250 fee and \$25 disbursement under item 4 of the Tariff. It is clear on a review of the appeal file that the only motion argued by the parties was a show cause motion decided by the Court on May 23, 2013. The Court's decision on the show cause motion included an indication that there would be "no order as to costs." As such, Mr. Owens agreed that the amounts under item 4 are not properly claimed and should be taxed off.

Mr. Gillanders, on behalf of the respondent, took no issue with the fees claimed or with the disbursements for court filing/issuing fees. He questioned the other disbursements claimed, particularly the \$1192.80 photocopying disbursement on the basis that the affidavit of disbursements provides insufficient detail to be a proper voucher as contemplated by the Tariff.

In response to my questions, Mr. Owens advised that the photocopying disbursement claimed represents a per copy cost of \$0.40 which is the cost he passes on to his client for in-firm photocopying. He based the disbursement on five copies of the appeal book and appellant factum (1 original for the court file, 3 copies for the panel and 1 copy for respondent counsel). Mr. Owens also confirmed that, although no agreement as to contents of appeal book was ultimately reached between the parties, he did prepare one and send it to respondent counsel, justifying the item 6 fee claimed.

Analysis

As noted above, the item 4 fee and disbursement will be taxed off. All other fee items listed in the proposed bill of costs appear to be appropriately claimed. All other court filing/issuing disbursements are also appropriate, having been already incurred or about to be incurred (in the case of the certificate of taxation) by the appellant.

As for other disbursements, while, historically, in-firm photocopying charges were not considered to be proper disbursements, a review of fiats on taxations reveals a gradual change in this area. Since 2008, in-firm photocopying charges have been allowed as disbursements with certain limits. Those limits relate to the per copy charge -- which to date has not been allowed at more than \$0.25 per copy regardless of what cost has been passed on to the client -- and to the number of copies -- which must correspond with the number and length of the documents prepared by the party claiming the disbursement.

I agree with Mr. Gillanders' concern about the amount of detail provided in the affidavit of disbursements. Ideally, an affidavit of disbursements would set out the number of copies claimed and the per copy cost charged (for in-firm photocopying) and would append invoices or receipts to back up other disbursements (except court filing/issuing disbursements for which a record exists on the appeal file).

After considering existing practice, and in light of the information provided by Mr. Owens during the taxation hearing, I am prepared to allow a photocopying disbursement of \$700 which represents \$0.35 per page (400 pages) for five copies of the appellant's appeal book and factum (one original for the court file, three copies for the panel and one copy for respondent counsel). I have allowed \$0.35 per page rather than the usual \$0.25 per page on the basis that Mr. Owens only claimed the cost of the five copies of the material provided to the Court and to counsel opposite and I would normally allow a copy for appellant counsel and a copy for the appellant himself. Seven copies of the appeal book and factum at \$0.25 per page would amount to \$700. I will also allow the binding and courier disbursements which do not seem unreasonable, amount to less than \$100 combined, and to which Mr. Gillanders did not strenuously object.

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

Taxed on: \$ nil
Taxed off: \$ 767.80 (\$275 for item 4 and \$492.80 for photocopying)

The proposed bill of costs is therefore taxed and allowed at \$3880.60. Mr. Owens should prepare and file a Certificate of Taxation of Costs to this effect (in Form 11d) for issuance.

DATED at Regina, Saskatchewan, this 9th day of October, 2015



REGISTRAR – COURT OF APPEAL