

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Sidhu v. Brassel***
2005 BCSC 1833

Date: 2005-06-30
Docket: M041904
Registry: Vancouver

Between:

**AMIT SINGH SIDHU and PAVLEEN KAUR SIDHU by their Litigation Guardian,
GURSATINDER KAUR SIDHU, HARDEEPAK SINGH SIDHU and the said
GURSATINDER KAUR SIDHU**

PLAINTIFFS

And:

PETER RICHARD BRASSEL

DEFENDANT

Before: Master Donaldson

Oral Reasons for Judgment

In Chambers
June 30, 2005

Counsel for Plaintiffs

Ms. K. Simon

Counsel for Defendant

Mr. K. Grady

Place of Hearing:

Vancouver, B.C.

[1] **THE COURT:** This is an application to tax bills of costs in what has become, through the process of simplification, a very complicated matter. The action initially was commenced with there being four named plaintiffs, which I will describe as a mother, a father and two children, against the defendant. The action was to be dealt with pursuant to Rule 66 and, indeed, so far as the claim of the

mother is concerned, proceeded on that basis. It is my understanding, however, that it was concluded that the claims of the father and the two children would be dealt with by way of a Rule 18A application, and indeed that was done.

[2] The situation then places us in, if you will, a hybrid Rule 66/18A situation, which raises interesting questions, many of which I will deal with in these brief reasons.

[3] Counsel for the plaintiff, which was successful in the two claims, has presented a bill of costs in accordance with the Rule 66 provisions, namely, claiming \$4,800 plus taxes and hearing costs relating to the assessment of the bill of costs and, additionally, three separate bills of costs, one for the father and one for each of the two children pursuant to the 18A application.

[4] It should be noted the two children are represented by their litigation guardian, which is their mother. Nothing turns on the fact that the litigation guardian was herself a plaintiff.

[5] The procedure that I followed in dealing with the matter was to assess the bills of costs of the father and the two children as one bill of costs and ensure that all items that had been claimed in the separate three bills of costs were included in one. I am satisfied that it is clearly not appropriate to attempt to permit an allowance of, for example, items 7 and 8 dealing with documents, deal with preparation of examinations for discovery, et cetera, separately, particularly where the litigation guardian was examined for one half day in relation to both of the children and the father was examined for one half day. I am satisfied there should be allowance for

preparation and attendance at the examination of the father and preparation and attendance at the examination of the litigation guardian and allowed items for those headings.

[6] I also dealt with the items 7 and 8, dealing with obtaining and providing discovery documents, in a global sense and allowed four and six units respectively for those two items.

[7] I will now briefly embark upon comments relating to the confusion or complications which arise when there is a Rule 66 application which again, in the attempt at making matters simple, have provided that in Rule 66(29)(b), this being applicable as the trial took more than one day:

Unless the court orders otherwise or the parties consent, and subject to Rule 57(10), the amount of costs exclusive of disbursements, to which a party is entitled is as follows: ...

(a) If time spent on the hearing of the trial is more than one day,
\$4,800.

[8] In the Rule 66 bill of costs, that is to say, the bill of costs relating to the mother, amounts have been claimed for items 20 and 21, namely, preparation to assess costs. I am satisfied that a clear reading of Rule 66(29) includes within the \$4,800 that is allowable the items of 20 and 21 for the preparation and assessment of bill of costs notwithstanding the fact that, as a result of these circumstances, it became indeed a complicated matter. I have allowed items 20 and 21 in the assessment of costs in relation to the three plaintiffs who proceeded to judgment pursuant to Rule 18A.

[9] Counsel on behalf of the defendant raised the issue that Rule 66 does not make reference to unit items but that Rule 57(8.1) reads as follows:

If tax is payable by a party in respect of legal services or disbursements, the Registrar must, on assessment under subrule (1) or (3), allow an additional amount to compensate for that tax, which additional amount must...

[10] And then the applicable reference is:

(iii) In any other case the monetary value of the units assessed.

[11] And then carries on.

[12] The position taken by counsel for the defendant is that the taxes charged here of some \$672 are not applicable and should not be borne by the defendant as they do not relate to unit items but, rather, the lump sum costs as is ordered by Rule 29(b). I am satisfied that the operative provisions and to the extent there is a conflict in the reading of Rule 8.1, which I do not acknowledge, is that the primary purpose of Rule 8.1 is to ensure that where tax is payable by a party in respect to legal services or disbursements, the tax must be included. There seems to me no accompanying provision to alleviate from the legal services provider, that is to say, counsel for the plaintiff mother, the requirement to pay \$336 into the coffers of the federal government and \$336 into the coffers of the provincial government. This is perhaps not the time and place to comment generally as to whether or not taxes on legal services should be placed into the coffers of the provincial government and that is being addressed, as I understand it, in other forums.

[13] In any event, I am clearly satisfied that it is appropriate and necessary that the PST and GST that has been charged in this bill of costs be paid by the unsuccessful defendant.

[14] This then leaves the remaining issue as to how in these circumstances to deal with Rule 66. The matter took two days of trial and so there are 30 units which are clearly set aside for that. Subtracting the usual bill of costs being at scale 3, that would leave some 30 units if one is to divide 4,800 by \$80, which would be applicable billing for items 1 and 3, production of documents, discovery of the plaintiff and defendant, setting a matter for trial, an order being obtained and costs being assessed. I have, in relation to the discoveries and the setting the matter for trial and items 20 and 21, attributed therefore 12 units, leaving a balance of 18 units which would cover items 1, 3, 7 and 8.

[15] As I have mentioned, in dealing with the bill of costs of the father and the two children, I made an allowance of four units for production of documents or obtaining documents and six units for production, and at the time that was done I advised counsel that I would revisit that when attempting to meld Rule 18A costs with the Rule 66 costs. I am satisfied that the usual provision under Rule 66 for a matter which, by definition, is one of some simplicity, would be an allowance of approximately six units for item 1 and three to four units for item 3.

[16] I am satisfied that, so far as the bill of costs relating to the 18A is concerned, there should be removed an allowance of two units for item 7 and two and a half units for item 8 and that, by virtue of the fact that there is communications with the

Public Trustee in relation to the two infants. I am satisfied item 1 should be allowed at two units and, so far as item 3 is concerned, no units as there is nothing unusual or exceptional in the writ and statement of claim and I am satisfied that the unit items as would otherwise be allowed under Rule 66 should not be varied.

[17] Counsel are to be commended for the significant efforts they put into resolving issues so far as the disbursements are concerned and, with very little assistance from me, they reached agreement, for which they are to be commended.

[18] Now, I'm assuming, counsel, that you can do the math but perhaps we should just take a quick look at the father's bill of costs.

[19] MR. GRADY: Your honour, I've missed something. What have you allowed for items 1 and 3 in the Rule 18(A)s?

[20] THE COURT: I've allowed two for item 1 and zero for item 3, and then in it for 7 I've allowed two units and for 8 I've allowed 3 1/2.

[21] MR. GRADY: Right, thank you.

[22] THE COURT: Very interesting. Very interesting. Thank you.

[23] I think I'd better keep this for my records and obviously, if you can't resolve things – I don't like the idea of you not resolving things but if you can't, then I've kept this back and hopefully, if you get back to me by phone quickly, I won't have forgotten what I've said.

“Master A. Donaldson”