



SUPERIOR COURT OF JUSTICE

Case Name: Nelson v. Ruscetta
Court File No.: 04-CV-281154CM2

Counsel:

Name	Party	Fax
R. Naimark	Plaintiff	416-777-2050
R. Gray	Defendant	416-593-7760

REASONS FOR DECISION (Costs)

These reasons relate to the issue of costs arising from a motion by the defendant in which the defendant sought an order that the plaintiff attend a Functional Abilities Evaluation ("FAE") and a second defence medical with a physiatrist and that the plaintiff re-attend for further examination for discovery. In the result, I dismissed the aspect of the motion seeking the FAE and the second defence medical and granted the aspect of the motion compelling the plaintiff to re-attend for further examination for discovery, save that the re-attendance would be for the purpose of follow up discovery on answers to undertakings and refusals ordered answered.

For the reasons that follow, the defendant shall pay costs to the plaintiff, fixed on a partial indemnity basis, the amount of \$2,100 plus GST thereon plus disbursements of \$350 within 30 days.

The plaintiff seeks partial indemnity costs of \$4,738.65 for fees and \$886.11 for disbursements, for a total of \$5,624.76.

The defendant submits that there be no costs such that each party bears their own costs in light of the divided success on the motion or alternatively, the defendant seeks substantial indemnity costs in the amount of \$7,333.73 for fees and \$235.65 for disbursements, for a total of \$7,569.38.

There was in my view divided success on the aspect of the motion relating to the undertakings and refusals and the re-attendance for follow up examination for discovery and, as a result, I would see these matters as neutral so far as the issue of costs is concerned.

However, it is my view that the primary focus of the motion related to the FAE and the second defence medical and, in large measure, the materials related to these issues.

The plaintiff was entirely successful on this issue and it is my view that the plaintiff is entitled to costs of the motion as a result.

The plaintiff seeks costs on a partial indemnity basis and that scale of costs is appropriate.

As to quantum of costs, it is my view that some of the time spent on the motion is excessive. I did not view the legal or factual issues on the motion as complex. The materials were not voluminous. The motion was fairly straight forward.

Mr. Naimark spent 14 hours in preparation and 5 hours on attendance. A junior associate, Ms. Rosenthal, spent 2 hours in preparation. Another associate, Ms. Zigomanis, spent almost 11 hours preparing the bill of costs. In my view, Mr. Naimark's time should be reduced to 10 hours. I would not allow 11 hours to prepare a bill of costs and that would be reduced to 1 hour. I see no reason to involve a junior associate on the file, where it appears that Mr. Naimark was closely involved in the preparation of the motion materials. I would allow counsel fee at \$2,100

There is some clerk time, presumably in relation to the undertakings aspect of the motion, which I would not allow in light of my earlier stated view that this aspect of the motion was a wash with respect to the aspect of the motion for the re-attendance.

I disallow the disbursement of \$517.50 for the "filing fee". There are no details as to this disbursement, which seems high. I would allow the remaining disbursements, which I would fix at a global figure of \$350.



Master Sproat
December 8, 2008