

Court of King's Bench of Alberta

Citation: Plastk Financial & Rewards Inc. v Digital Commerce Bank, 2024 ABKB 4

Date: 20240102
Docket: 2301 00820
Registry: Calgary

2024 ABKB 4 (CanLII)

Between:

Plastk Financial & Rewards Inc.

Plaintiff/ Defendant by Counterclaim

- and -

Digital Commerce Bank

Defendant/Plaintiff by Counterclaim

**Costs Endorsement
of the
Honourable Justice J.S. Little**

I. Introduction

[1] I gave an oral decision on August 2, 2023, issued in written form at 2023 ABKB 458 (Decision).

[2] At paragraph 48 of that endorsement, I invited the parties to seek any necessary assistance respecting costs by August 31, 2023. Counsel did so by written submissions dated August 22, 2023 (DCB) and August 31, 2023 (Plastk). Unfortunately, those written submissions did not reach me on those dates due to some internal administrative confusion. But I have them now.

[3] In the Decision, I dismissed Plastk’s application to confirm and expand interim injunctions granted in January and March 2023. My interpretation of those injunctions was that they had been granted to permit Plastk sufficient time to find a new financial intermediary. Plastk and DCB clearly wished to sever their relationship, and Plastk had been working for some time with a new financial intermediary which would replace DCB. I made clear in the Decision that sufficient time had passed and that the injunctions needed to be lifted but, as offered by DCB, fixed August 31, 2023, as the final date on which they would lapse.

[4] DCB’s position is that as the successful party, it is contractually entitled to full indemnity costs in the amount of \$256,602.08 but will accept \$125,000, representing partial indemnity.

[5] Plastk argues that:

- there was mixed success and that each party should bear its own costs,
- alternatively, any costs award against it should be set off against the costs to which Plastk was entitled for the two earlier applications in which the injunction was granted and extended,
- alternatively, costs should be awarded in the cause, and
- in any event, costs should follow Column 1 of Schedule C, not be based on the *McAllister*¹ principles, nor based on the contract between the two parties.

II. Entitlement

[6] I reject Plastk’s argument that there was mixed success. DCB was entirely successful in its application to vacate the injunction. Any other relief it sought was peripheral to that goal. The only factor which mitigates that success is that Plastk was given some time before the injunction was terminated, but DCB volunteered that concession. The Court was prepared to have it terminate immediately.

III. Quantum

[7] The better argument on quantum, however, is that of Plastk.

[8] In my Decision, I referred to there being triable issues over the contractual relationships between the parties. The primary contract is one that entitles DCB to its costs of enforcement for breaches of that contract, but I hesitate to make a determination at this stage that any breach was entirely one-sided. Further, the summary that DCB produced lists legal costs for the period May 26 to August 16, 2023. It is not clear whether all those costs relate to the August 2 hearing. I will therefore not award full indemnity costs or a substantial fraction thereof.

[9] Similarly, my read of *McAllister* is that the quantum of costs it sanctions are more appropriate in situations that involve “prosecuting a claim from Statement of Claim to judgment in a protracted piece of litigation involving arguably novel liability” (para 3). The case before me involved the fourth interlocutory application in a lawsuit which, while complex, was not yet in what might be considered its substantive phase.

¹ *McAllister v Calgary (City)*, 2021 ABCA 25

[10] In addition, Rule 10.33 recognizes that costs awards are to be based on a number of factors, most of which are applicable to completed actions. Few of those factors play into this interlocutory application which was but one in a series of related interlocutory applications.

[11] In my view, as reflected in the Decision, DCB was entitled to vigorously defend Plastk's application for a further extension and expansion of an interlocutory injunction that had already been in place for a considerable time and pursuant to which DCB continued to suffer additional financial risk.

[12] Further, in defending its position, it was required to expend considerable legal resources. While I am not prepared to adopt DCB's submission that that entitlement reaches \$125,000, an award of \$25,000 in fees, plus reasonable disbursements, recognizes that this was something more than a routine chambers application and that calculation pursuant to Schedule C, even with a multiple, would be inadequate.

Based on written submissions.

Dated at the City of Edmonton, Alberta this 2nd day of January, 2024.

J.S. Little
J.C.K.B.A.

Appearances:

Ms. S. Roberts
for the Plaintiff/Defendant by Counterclaim

Mr. B. Kruk
for the Plaintiff/Defendant by Counterclaim

Ms. C. Sutter
for the Defendant/Plaintiff by Counterclaim

Mr. D. Pope
for the Defendant/Plaintiff by Counterclaim