

# Court of King's Bench of Alberta

**Citation: 1933748 Alberta Ltd v Engel, 2023 ABKB 528**

**Date:** 20230919  
**Docket:** 2103 08898  
**Registry:** Edmonton

Between:

**1933748 Alberta Ltd**

Appellant/Respondent  
(Defendant)

- and -

**Alex Engel**

Respondent/  
Cross Appellant  
(Plaintiff)

- and -

**1933748 Alberta Ltd and McCor Management (AB) Inc**

Respondents on Cross Appeal  
(Defendants)

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**Ruling on Costs  
of the  
Honourable Justice G.R. Fraser**

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Appeal from the Decision by  
J.L. Skitsko The Honourable Judge

Dated the 29<sup>th</sup> day of June, 2022 and July 22, 2021  
(Docket: P1890300255)

[1] This is a cost determination related to my earlier decision, *1933748 Alberta Ltd v Engel*, 2023 ABKB 206. In that Decision, I found that 1933748 Alberta Ltd (193) owed \$10,335 plus GST to Mr. Engel. My Decision substantially lowered the Provincial Court Decision which had awarded Mr. Engel \$50,000 plus judgement interest from December 1, 2017.

[2] At the end of my Decision, I requested that if the parties could not agree on costs that they make written submissions to me within 30 days. Both parties have provided their written submissions.

[3] Mr. Engel seeks solicitor-client costs as well as interest at 24% per annum. This is based on a term contained in the contracts which states:

Terms are net 30 with a 2% charge per month (24% per annum) on all balances 15 days past due. Customer agrees to pay all costs associated with collecting past due balances including, but not limited to, any or all attorney's or collection agency's fees.

[4] In contrast, 193 submits that solicitor-client costs are not appropriate and that instead costs should be awarded based on Column 1 of schedule C of the *Alberta Rules of Court*. No total cost amount is suggested, and no submissions are made regarding interest.

[5] The Court has a great deal of discretion in determining costs<sup>1</sup>. This is specifically stated in r 10.31. Rule 10.33 provides a lengthy, non-exhaustive list of factors that the Court may consider when making a costs award. One of the factors involves the conduct of the parties. Although not specifically stated in my previous decision, both parties acted reasonably throughout the course of this litigation. There was a genuine issue to be litigated, both at the trial and at the appeal stage. It is unfortunate that the *Hamilton v Open Window Bakery Ltd*, 2004 SCC 9, case was not presented to the Provincial Court Judge. If it had been, it is likely this Appeal would not have been necessary.

[6] There is no doubt that Mr. Engel was ultimately the successful party in this litigation. Initially, he was receiving no compensation from the defendants. He was successful in obtaining compensation in his Provincial Court action. He was again successful in the Court of King's Bench action, although the amount of the award was greatly reduced. In that respect, the

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<sup>1</sup> See *McAlister v Calgary (City)*, 2021 ABCA 25 and *Weatherford Canada Partnership v Artemis Kautschuk and Kunststoff-Technik*, 2019 ABCA 92.

defendant was at least somewhat successful in the Appeal. I take this into consideration in making this cost award.

[7] I also take into consideration the three contracts that were at issue between the parties. The contracts contained a 24% per annum interest rate and full indemnity for costs incurred in collecting past due balances.

[8] The parties were engaged in lengthy litigation. The breach of contract occurred in 2017. There was discovery, along with questioning. I am unsure of exactly how much time discovery and questioning consumed. The Provincial Court trial took place over two days, one in November 2020 and one in April 2020. The trial Decision was June 2021. The Appeal was heard in one afternoon in November 2022. My Decision was April 2023.

[9] Neither party has provided exact figures regarding what was spent on legal fees. I have no doubt both parties incurred significant legal fees as a result of this lengthy litigation. I find, however, that the entire process was necessary. Mr. Engel had to pursue litigation since the defendant refused to pay anything after cancelling the contracts. The defendant needed to appeal the trial decision, as an error of law resulted in an excessive award.

[10] This litigation would fall under Column 1 of schedule C. As I am unaware of exactly what steps were taken in this litigation, and how long each step took, I am unable to properly come up with a number using Column 1. I also note that this litigation was likely more complex than most litigation that falls under Column 1.

[11] Taking into account the above factors, along with all the factors listed in the Rules, I conclude that is not appropriate to award solicitor-client costs. Some of the steps in the litigation were required by the defendant, and the defendant was successful. However, Mr. Engel was successful and is entitled to some costs.

[12] I am prepared to award Mr. Engel \$10,000 in costs. I am also prepared to award interest at the rate of 24% per annum based on my award of \$10,335 from January 1, 2018 until June 30, 2021. Interest after that time would be pursuant to the *Judgment Interest Act*.

Written Submissions received on 24<sup>th</sup> April, 2023 and Written Submissions filed on the 10<sup>th</sup> day of May, 2023.

**Dated** at the City of Edmonton, Alberta this 19<sup>th</sup> day of September, 2023.

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**G.R. Fraser**  
**J.C.Q.B.A.**

**Appearances:**

Murray L. Engelking,  
Engelking Law  
for 1933748 Alberta Ltd and McCor Management (AB) Inc

Tom Engel,  
Engel Law Office  
for Alex Engel