Court of King's Bench of Alberta

Citation: Just Biofiber Corp v Just Biofiber Structural Solutions Corp, 2025 ABKB 407

Date: 20250703
Docket: 2301 17141
Registry: Calgary

Between:

Just Biofiber Corp., JBF Ohio LLC and Perkins Property Investments Ltd.

Applicants

- and -

Just Biofiber Structural Solutions Corp., Michael DeChamplain, Lionel Terry Radford, Victor Boname, The Estate of Victor Boname, Peter Brown, Mark Faber, Karen Kuwica, Trans-Eco Capital Corp., Arno Leinonen, John Doe and ABC Corp.

Respondents

Costs Endorsement
of the
Honourable Justice Michael J. Lema

I. Introduction

[1] Following judgment in this case (2025 ABKB 102), the successful respondents seek solicitor-client costs from the applicants.

[2] Two of the applicants – Just Biofiber Corp and Perkins Property Investments Ltd – offered no costs submissions.

[3] Emphasizing its peripheral role in the proceedings, JBF Ohio LLC asks that no costs be awarded against it.

[4] I find that the respondents are entitled to the claimed solicitor-client costs against Just Biofiber and Perkins Property, with no costs awarded against JBF Ohio, as explained below.

II. Analysis

A. Costs direction

[5] Here is the costs portion of the main judgment:

> The Respondents are entitled to costs on a scale (e.g. indemnity, partial indemnity, Schedule C, etc.) and quantum to be determined.
>
> Their costs submissions (3-page maximum, excluding any supporting materials e.g. draft bill of costs, time records, cases, etc.) are due by March 7, 2025, with the Applicants' (same rules) by March 21, 2025.

B. Respondents' materials

[6] The respondents submitted detailed costs submissions, including a written brief, authorities, and a draft bill of costs (with alternative drafts for costs at different levels) on March 7, 2025, with an amendment to the draft bills on March 10, 2025.

[7] I outline their key submissions later.

C. JBF Ohio's materials and position

[8] JBF Ohio, which had appeared at the application via its director (with leave) and filed no brief or affidavit, retained counsel to respond to the respondents' costs submissions. Here are its key arguments supporting its "no costs" position, submitted via costs brief filed March 21, 2025:

- " ... very little of the litigation misconduct complained of in the Respondents' submission was conduct by JBF Ohio LLP and any allegations of litigation misconduct made towards JBF Ohio LLC were oral submissions made by [its director] without the benefit of counsel";
- "JBF Ohio LLC was not in favour of the granting of some of the relief sought in the Application, and agreed with certain aspects of the Respondents' position";
- [its director] appeared [at the application] on short notice, without the benefit of counsel to prevent further delay in the matter";
- " ... Perkins Property ... brought this Application without standing, seriously prejudicing JBF Ohio LLP's position"; and
- " ... Just Biofiber Corp brought this Application without sufficient evidence to prove its allegations, seriously prejudicing JBF Ohio LLC's position."

D. Failure of Just Biofiber and Perkins Property to file costs submissions

[9] Just Biofiber and Perkins Property did not submit any costs position or material by the March 21, 2025 deadline.

[10] On April 23, 2025, my assistant emailed counsel for Just Biofiber and Perkins Property asking if he had sent costs submissions on their behalf and, if not, whether he was still planning to provide them and, if so, when.

[11] The same day, another counsel in that counsel's firm responded that "... our office has withdrawn as lawyers of record for the Plaintiffs Just Biofiber Corp and Perkins Property Investments Ltd and as such do not have instructions to take any further action or have any further involvement in this matter. We also have not made any submissions on costs."

[12] It appears that the withdrawal occurred on or about March 20, 2025 i.e. shortly before the plaintiffs' costs submissions were due.

[13] On June 10, 2025, my assistant emailed the representatives of Just Biofiber and Perkins Property named in the notice of withdrawal, to the provided emails, asking if they intended to provide costs submissions and, if so, to provide them by 4.30 pm on Friday, June 27, 2025. Copies of the Respondents' costs submissions and those of JBF Ohio were attached.

[14] As of 2 pm on July 2, 2025, no submissions have been received from either of those plaintiffs.

E. Adequate opportunity to make costs submissions not exercised

[15] On the assumption that counsel for those plaintiffs provided them with a copy of the main judgment on or shortly after February 24, 2025 (issue date), from which they would have seen the costs directions including the March 21, 2025 deadline for the plaintiffs' submissions, and also assuming that their then counsel would have informed or reminded them of that deadline before his firm withdrew (on or about March 21, 2025), and, in any case, given the noted outreach on June 10, the extension for costs submissions to June 27, and the absence of submissions by the extended deadline or to 2 pm on July 2, I find that Just Biofiber and Perkins Property had sufficient opportunity to make submissions on costs and elected to make no submissions.

[16] What is the significance of that election?

F. "Unopposed costs submissions" cases

[17] Guidance comes from the following Alberta decisions featuring unopposed costs submissions.

[18] In ***Vizor v 383501 Alberta Ltd (Val Brig Equipment Sales)***, 2022 ABQB 245, Friesen J. (as she then was) granted the requested full-indemnity costs, emphasizing misconduct by the "no submissions on costs" party:

> VBES argued entitlement to costs of the various applications on a **solicitor and own client full indemnity basis pursuant to the costs clauses in the contracts between the parties.**
>
> ...
>
> **VBES argued in addition that indemnity costs, or other enhanced costs, can be ordered where the party has engaged in reprehensible or outrageous conduct during the litigation, and/or where a party's allegations of morally reprehensible conduct by the other are proven to be baseless.** VBES submitted that Mr. Vizor's conduct throughout the proceedings has been "inappropriate and

> outrageous", including significant aspersion cast on Mr. Berube's character in Mr. Vizor's various sworn affidavits.
>
> Further, VBES submitted that Mr. Vizor filed a significant volume of **materials** which were repetitive, irrelevant and **in several cases, contained "slanderous" statements about Mr. Berube**. Mr. Vizor's manner of proceeding and frequent noncompliance with the *Rules of Court* added to the time and complexity of the proceedings, requiring additional expenditures by VBES to defend and advance its position.
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> …
>
> **VBES submitted a "conservative" draft Bill of Costs on a solicitor and own client full indemnity basis which accounted for the full costs in respect of the Applications (including the submission of its costs brief) at $47,614.06,** inclusive of disbursements and GST. The Bill of Costs included courtesy discounts which counsel had given to VBES.
>
> The inclusion of full solicitor and own client indemnification clauses in contractual agreements of this nature are traps for the unsophisticated and the unwary. That said, it is not my role to remake this legal bargain which was properly agreed to by the contracting parties. VBES has acted appropriately throughout these proceedings and has not engaged in abusive litigation or any other kind of litigation misconduct: *Canadian Natural Resources* at para 107. As such, there is **no basis to rely on my residual discretion to decline to enforce the solicitor and own client costs clause.**
>
> **Furthermore, Mr. Vizor's conduct in pursuit of litigation was extremely problematic, potentially rising to the level of egregiousness described in the relevant jurisprudence.** He filed voluminous and repetitive materials, paid little to no attention to the applicable procedural rules throughout these proceedings, and made **constant allegations of impropriety against Mr. Berube personally** - in one case, appeared be threatening him with bodily harm. In addition, he made groundless allegations of bias against the male Justices and Masters of the Court of Queen's Bench in Edmonton.
>
> **VBES is therefore awarded costs in the cause on a full indemnity basis. They are directed to submit their draft Bill of Costs in the sum of $47,614.06 to the Assessment Officer for review and assessment to further ensure fairness, given that Mr. Vizor did not make representations on his own behalf with respect to the costs issue.** [paras 25, 30, 31, 33, and 37-39] [emphasis added]

[19] In ***Anokhina v Banovic***, 2019 ABQB 36, Mah. J. granted the requested full-indemnity costs against the no-costs-submissions party where his application was found to have been "completely unnecessary":

> I gave a decision in this matter, reported at 2018 ABQB 1012, dismissing the Defendant's summary dismissal application. As part of an earlier written submission, **counsel for the Plaintiff had requested enhanced costs of the application. Counsel for the Defendant had not had the opportunity to address costs, so I invited him to do so if he wished prior to December 21,**

> **2018. I subsequently did not receive any submission from Defendant's counsel as to costs.**
>
> As indicated in my previous decision, I felt the **special application before me was completely unnecessary as the same issue** (whether or not summary dismissal should be granted because of expiry of the limitation period) **had been conclusively determined by another Judge of this Court in a previous application in this very action**.
>
> **I therefore grant the Plaintiff's request for full indemnity costs for the special application, payable forthwith. If counsel cannot agreed on the quantum, then it shall be determined by an Assessment Officer under *Rule 10.37*.** [paras 1-3] [emphasis added

[20] In ***Nordstrom v Stenco Incorporated***, 2016 ABQB 45, Michalyshyn J. granted the requested and unopposed solicitor-client costs, finding "reprehensible, scandalous or outrageous" conduct by the "no costs submissions" party:

> **The case for solicitor-client costs is outlined comprehensively in the plaintiff's written submissions of November 16, 2015, as updated November 30, 2015. The claim is for $82,730.56.**
>
> The plaintiff's submissions note, amongst other things, the **last-minute assertion of the conflict of interest**; the nine questionings on affidavits, including questionings of both plaintiff's counsel; the seven case management hearings over an 11-month period; the many, many written submissions on issues large and small; the many court reviews of disputed documents; the multiple deadlines missed by the defendants and/or adjournments given to allow the defendants to attempt to perfect submissions and/or evidence; the changing nature of the alleged conflict of interest – including that the defendants' first named Mr. Court, then only later added Mr. Stults, and still later after appearing to abandon the claims, then resurrected them in mid-stride based on CVs with "780" area codes that were unaccountably never put in evidence, and which were **no evidence of a conflict of interest in any event.**
>
> The plaintiff argues that the conflict of interest allegations were nothing more than a device intended to force a trial adjournment in January, 2015.
>
> Again, **the defendants did not bother to argue otherwise. …**
>
> …
>
> I agree entirely with the plaintiff's characterization, in written submissions to which the defendants did not reply, that:
>
> > **The Defendants … repeatedly altered the basis for their allegation that there was a conflict of interest, making one self-serving statement after another without any corroborative evidence, as each previous basis was proven to be false, in order to prolong and hinder the determination of this issue.**

> **I find that the defendants' conduct is positive misconduct which, as noted in** *Jackson v. Trimac Industries Ltd.***,1993 CanLII 7031 (AB QB), [1993] A.J. No. 218, at para 28, justifies heightened costs to deter others from like conduct.**
>
> Finally, and not least, I find misconduct in these long-standing allegations which have impugned the honesty and integrity of both counsel for the plaintiff, each of whom are officers of the court, and for each of whom a reputation *for* honesty and integrity is of the utmost value.
>
> In the face of these allegations, I find that both plaintiff's counsel Mr. Court and Mr. Stults have conducted themselves throughout with restraint and professionalism, proverbially 'in the finest traditions of the bar'.
>
> **On the whole I do not hesitate to conclude that the defendants' conduct has been "reprehensible, scandalous or outrageous"** as understood in *Young v. Young*, 1993 CanLII 34 (SCC), [1993] 4 S.C.R. 3, 1993 SCC 34.
>
> What's more, there is **no basis upon which I would question the amounts claimed, either as to hourly rates or time billed. On their face the hourly rates are reasonable. Plaintiff's counsel has explained sufficiently the many hours spent responding to the defendants' often confusing, ill-founded but unrelenting claims. In response to this, the defendants failed to make no submissions, after being invited repeatedly to do so. As such, solicitor-client costs are quantified, as claimed, at $82,730.56.** This award is net of the earlier costs of $2,400 awarded on March 18, 2015. [paras 84-87 and 91-96] [emphasis added]

[21] For a similar approach, see also ***Beaver First Nation Band v ATN Farms Ltd***, 2001 ABQB 1046 (Watson J. as he then was) at paras 1-5 and 11-13.

G. Application of those principles here

[22] As noted, the Respondents seek solicitor-client costs.

[23] Here are their key reasons (excerpted from their costs brief):

> The primary purpose of a costs award is to provide reasonable indemnification to a successful party for the expense incurred during litigation. However, **costs awards may further be employed as "instruments of policy" to sanction bad or frivolous behaviour**.
>
> This Court has considerable discretion to determine an appropriate costs award. The Court may consider the factors enumerated in Rule 10.33 of the *Alberta Rules of Court*, Alta Reg 124/2010. In this case, the Respondents submit that the Court should award S/C Costs because, consistent with the caselaw: (1**) the Applicants' conduct of the litigation was blameworthy**; (2) **justice can only be done by complete indemnification** of the Respondents' costs; (3) there was **no serious issue of fact or law requiring complex, lengthy, expensive proceedings**; (4) the **positive misconduct of the Applicants should be deterred**; and (5) the Applicants levied **numerous unsubstantiated allegations of serious misconduct against the Respondents, including repeated allegations of fraud and criminal activity**.

…

From the outset, the Applicants advanced **wholly unproven allegations of fraud, deceit, theft, and general illegality**, including a baseless claim that one of the Respondents, Mr. Brown, was attempting to flee the jurisdiction to avoid questioning. These allegations can be found

at cross-examinations, in written argument, and at the hearing. Notably, at the hearing, counsel for JBF Corp. and Perkins Ltd., acknowledged that support for certain of their allegations was not in the record. Despite ample opportunity for the Applicants to tender a supporting affidavit or withdraw these allegations, they, instead, doubled-down and suggested that a fresh witness lead *viva voce* evidence. **These serious and very damaging allegations appropriately merit S/C costs. Ultimately, the Applicants failed to substantiate any of these allegations and also failed to establish "even a genuine issue to be tried" with respect to their claims in oppression**.

…

The **allegations made against the Respondents carry serious reputational stigma**. This stigma is further compounded in light of the fact that the Respondents must market the IP in the spectre of these unfounded claims. Worse still, the Applicants **did not advance *any* evidence substantiating *any* allegations against Ms. Kuwica or the Estate of Victor Boname, forcing them to incur legal fees to defend meritless and unfounded claims all the way to a decision**.

…

The affidavit evidence of Christopher Perkins, sworn on behalf of Perkins Ltd., had **significant omissions, and inconsistencies with allegations advanced in on-going proceedings in British Columbia**. Attempts to question Mr. Perkins with respect to the British Columbia proceedings were objected to as irrelevant. For its part, **JBF Corp. failed to meet its obligation to put its best foot forward, or indeed, to lead *any* evidence**. As a result, and despite multiple affidavits, six (6) days of questionings, and lengthy and urgently prepared briefs, the two Applicants represented by counsel failed to advance their Application beyond even preliminary consideration by this Court.

…

As outlined above, the Applicants' conduct in bringing this Application was replete with a **false sense of urgency** (including unnecessary inclusion on the Commercial List), as well as unreasonable positions on scheduling and procedural matters, and *ex parte* communications to the Court. This conduct materially drove up costs and expense for the Respondents. **The Action within which this Application was brought seeks to collect amounts in the excess of $160,000,000.00, and is bet-the-company litigation. The legal services were performed by the Respondents' counsel in a thorough manner appropriate with the complex, sweeping, and serious nature of the relief sought by the**

> **Applicants, and properly required a high degree of skill, work, and responsibility**.
>
> **The Respondents submit that S/C costs are appropriate, as the Applicants conducted this litigation as a "weapon" in order to ensure that the Respondents were put to as much expense and hardship as possible, in the face of allegations which were serious, and personally and professionally damaging.** The Respondents' proposed Bill of Costs 'A' reflects the reasonable and proper costs they incurred to respond to a weaponized Application seeking sweeping and exceptional relief against eight different corporate and individual Respondents; particularly, when the claimed relief continued to shift up to, and including, the Hearing day.
>
> …
>
> For the reasons set out herein, the Respondents' request S/C Costs, and its fees and disbursements, as set out in its proposed Bill of Costs 'A' in the amount of $329,586.32.
>
> In the alternative, the Respondents request *McAllister* costs on a 70% indemnification basis, as set out in Bill of Costs 'A' in the amount of $230,710.42. In the further alternative, the Respondents request costs pursuant to Schedule C, Column 5, with a second counsel fee, and a x5 multiplier, as set out in proposed Bill of Costs 'B' in the amount of $100,474.78. [paras 3-6 and 8-12] [emphasis added]

III. Conclusion

[24] I accept the Respondents' position that solicitor-client costs against Just Biofiber and Perkins Property are warranted here.

[25] As explained in the main judgment, Just Biofiber failed to put forward evidence from its principal, who was actually a party to one of the central transactions impugned by the plaintiffs and (I found) "declined to provide evidence on this aspect … because he was concerned that he could not square his involvement in and approval of the share sale with [Just Biofiber's] present efforts to characterize them as oppressive" (main judgment, para 45).

[26] The principal also provided no evidence on another central transaction challenged by the plaintiffs on which he necessarily had material information (main judgment, para 46).

[27] Leaving Just Biofiber with effectively no direct evidence of its reasonable expectations on the oppression claim (main judgment, paras 27-56).

[28] It also provided negligible evidence of the value shortfall in certain impugned-as-undervalue transactions (main judgment, para 57-100).

[29] And no proof of specific harm or prejudice to it (main judgment, paras 101-105).

[30] Moreover, as catalogued by the Respondents in Appendix A ("Allegations and Conduct Chart"), Just Biofiber barraged some of the Respondents with found-to-be-unsubstantiated allegations of fraud, deceit, and bad faith.

[31] Given the serious evidence shortcomings, the unproved allegations of serious wrongdoing, and the absence of any counter-position or counter-argument on costs, I award the Respondents solicitor-client costs against Just Biofiber in the requested amount of $329,586.32 subject to assessment-officer certification of those claimed costs or disbursements (or award such lesser amount that may be certified on such review) if, by 4.30 pm on July 11, 2025, Just Biofiber requests such certification.

[32] Given its alignment with Just Biofiber on the reasonable-expectations, undervalue-transactions, and other application issues and on the allegations of wrongdoing, I find that Perkins Property is jointly and severally responsible for the same solicitor-client costs as approved above, also subject to Perkins Property's right to request assessment-officer certification of that amount, with the same deadline for so requesting.

[33] As for JBF Ohio, I accept its position outlined above -- i.e. it was effectively a peripheral participant at the application and one with positions supporting each side on various issues – and decline to make any costs award against it.

[34] I thank the parties providing costs submissions for those helpful materials.

Heard by way of written submissions provided on March 7, 10, and 21, 2025.
Dated at Edmonton, Alberta on July 3, 2025.

Michael J. Lema
J.C.K.B.A.

Appearances:

Marin Leci / Aidan N. Paul / Logan Hale / Sabrina Chehade
Borden Ladner Gervais LLP
For the Respondents

Kyle Shewchuk
James & McCall Barristers
For JBF Ohio LLP

Just Biofiber Corp and Perkins Property Investments Ltd.
Unrepresented and no-costs-submissions Applicants