

In the Alberta Court of Justice

Citation: Custom Delivery Solutions CDS v Unogwu, 2024 ABCJ

Date: 20240318
Docket: P2290100130
Registry: Calgary

Between:

Custom Delivery Solutions CDS, a Division of Metro Supply Chain (MTH) Inc.

Plaintiff

- and -

Paul Amedu Unogwu acting as Sure Movers

Defendant

- and -

Custom Delivery Solutions CDS, a Division of Metro Supply Chain (MTH) Inc.

Defendant by
Counterclaim

- and -

1076556 Alberta Ltd. operating as South Trail

Defendant by Counterclaim

Reasons for Determination of Costs of the Honourable Assistant Chief Justice D.B. Higa

[1] Mr. Unogwu was successful in defending the action commenced by Custom Delivery Solutions CDS, a division of Metro Supply Chain (MTH) Inc. (“CDS”). CDS and 1076556 Alberta Ltd. operating as South Trail (“South Trail”) were successful in defending the Counterclaim filed by Mr. Unogwu.

[2] All parties have submitted submissions regarding the awarding of costs.

[3] Mr. Unogwu seeks costs of \$5,400.00, however, his submissions do not indicate how that amount was calculated and justification for that amount. Further, although Mr. Unogwu incorrectly refers to his Counterclaim as a “Third Party Claim”, he submits no costs should be awarded in that proceeding.

[4] CDS submits that as CDS and Mr. Unogwu were both successful in defending the actions brought against them, each party should bear their own costs.



[5] South Trail was successful in defending the Counterclaim filed by Mr. Unogwu and seeks costs of \$5,081.01.

[6] Regarding both the main action and Counterclaim, the Court sees no reason to depart from the standard rule that costs should follow the event.

[7] In relation to matters between Mr. Unogwu and CDS, the Court agrees that each party should bear their own costs. On a calculation based on the Court's *Tariff of Recoverable Costs*, the parties would be entitled to relatively the same amounts.

[8] However, Mr. Unogwu submits he should be awarded enhanced costs pursuant to the issuance of a *Calderbank* offer. The Court agrees with CDS that enhanced costs are not appropriate.

[9] The Court of Appeal stated in **Bruen v University of Calgary**, 2019 ABCA 275 that, "Informal offers, such as *Calderbank* offers, are also relevant to costs, although doubling is not automatic or presumed:"

[10] The Court must also consider the factors considered in **Kent v MacDonald**, 2020 ABQB 29 in assessing whether enhanced costs should be awarded.

[11] This action was commenced on January 21, 2022. Mr. Unogwu's Dispute Note to the Amended Civil Claim was filed on April 7, 2022. The trial in this action was scheduled on April 19, 2023 and heard January 22, 2024. Counsel for Mr. Unogwu did not serve the *Calderbank* offer until December 18, 2023.

[12] Mr. Unogwu's offer simply proposed that CDS withdraw its claim on a without costs basis.

[13] In the circumstances, Mr. Unogwu's offer was reasonably rejected by CDS.

[14] First, the offer was provided over a year and a half after Mr. Unogwu defended the Action and only a few weeks before trial, with only two days for consideration and as the holiday season was approaching. Significantly the offer did not address the Counterclaim.

[15] Secondly, an offer proposing only that the other withdraw its claim, an offer presented days before trial, is not a reasonable and genuine compromise in the circumstances.

[16] The Court of Appeal in **Bruen** stated,

The courts view with scepticism offers to merely abandon actions or appeals, or to do so for nominal sums. An offer to the other party that they "think again" generally contains no element of compromise and is unlikely to promote settlement.

[17] The offer presented by Mr. Unogwu falls within the circumstances addressed by the Court of Appeal in **Bruen**.

[18] In the Court's view, after being involved in litigation for almost two years after filing its Claim, to receive an offer days before trial that it simply walk away, provides little or no incentive for CDS to accept such proposal. Especially, when the counterclaim remained outstanding.

[19] Mr. Unogwu is not entitled to enhanced costs. In relation to all matters at issue between CDS and Mr. Unogwu, each party shall bear their own costs.

[20] South Trail was successful in defending the Counterclaim and seeks costs pursuant to the *Tariff of Recoverable Costs*. South Trail also submits it should receive enhanced costs pursuant to a *Calderbank* offer.

[21] Mr. Unogwu's cost submission only briefly addresses South Trail. He makes no submissions relating to South Trail's *Calderbank* offer.

[22] South Trail was successful in defending the Counterclaim and is entitled to costs. Cost will be awarded based on the *Tariff of Recoverable Costs*, Column 2. Costs are awarded for Litigation step 1 of \$400.00; Litigation step 2 of \$150.00; Litigation step 4 of \$800.00; and Litigation step 5(a) of \$800.00, totalling \$2,150.00. Costs are not awarded for Litigation step 3 or 6(c) as proposed by South Trail. Disbursements of \$40.25 are also awarded.

[23] South Trail submits it is entitled to enhanced costs and references a *Calderbank* offer dated August 29, 2023. South Trail's offer was that it would accept a discontinuance of the Counterclaim on a without costs basis. The offer was open for acceptance until September 19, 2023. The *Calderbank* offer contained a summary of the facts relating to South Trail and the law addressing a claim against an insurance broker.

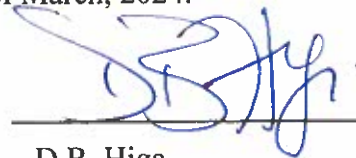
[24] As with Mr. Unogwu's offer, South Trail's offer was a discontinuance without costs. However, there are significant fact differences between the two offers. South Trail only became a party on June 30, 2023 and was served with the Counterclaim on July 6, 2023. South Trail filed its Dispute Note to Counterclaim on August 1, 2023.

[25] Arising from a full assessment of the merits of the Counterclaim, South Trail's counsel forwarded South Trail's *Calderbank* offer. The offer contained a full explanation of its rationale and was presented to Mr. Unogwu's former counsel on August 29, 2023, less than two months after South Trail was served with the Counterclaim.

[26] In the circumstances South Trail's offer was a reasonable and genuine compromise; created a costs advantage if accepted; was presented well before trial and shortly after South Trail became a party; contained a factual and legal basis for the offer; adequate time was allowed for consideration; and in view of the costs awarded in these reasons, South Trail has fared better than if the offer had been accepted.

[27] South Trail is entitled to enhanced costs and the costs awarded pursuant to the *Tariff* as detailed above are doubled. Accordingly, South Trail is awarded party and party costs of \$4,300.00 and disbursements of \$40.25.

Dated at the City of Calgary, Alberta this 18th day of March, 2024.



D.B. Higa
Assistant Chief Justice of the Alberta
Court of Justice

Appearances:

Counsel, Logan Maddin
for the Plaintiff and Defendant by Counterclaim, CDS

Counsel, Uba Anya
for the Defendant/Plaintiff by Counterclaim, Paul Amedu Unogwu

Counsel, Noah Hodgson
for the Defendant by Counterclaim, South Trail