Ottawa
1968
June 13
June 14

BETWEEN:

HOME JUICE COMPANY, HOME JUICE COMPANY LIMITED *et al* } APPLICANTS;

AND

ORANGE MAISON LIMITÉE ..... RESPONDENT.

Costs—Summary application to expunge trade mark—Party and party costs—Review of taxation—Negotiations between counsel—Preparation for trial—Tariff A, items 8, 36A—Recommended practice.

REVIEW OF TAXATION.

J. A. Devenny for applicants.

Brian A. Crane for respondent.

JACKETT P.:—This is an application for review of the taxation of the respondent's party and party costs herein.

This proceeding was originated by way of an Originating Notice under section 56 of the *Trade Marks Act* for an order expunging the registration of a trade mark. In accordance with section 58, the application was heard and determined summarily on affidavit evidence and judgment was in due course delivered, dismissing the motion with costs.

The respondent thereupon put before the taxing officer for taxation a bill of costs, claiming a total amount of $4,799.39. This bill was taxed at $1,653.50.

The application for review of the taxation is made under Rule 263 of the Rules of this Court which provides that costs shall be taxed by the Registrar or his deputy "subject, however, to review by the Court".

The Court is asked to review the taxing officer's allowances in respect of two items which read as follows:

8	Preparation for Trial (105 hours × $30 00)	$3,150 00
36A	Negotiation with Christopher Robinson to agree on arrangements to shorten trial (½ day)	200 00

The latter item was claimed and allowed under Item 36A of Tariff A, which reads as follows:

> 36A. Counsel fees on negotiations with the opposing party with a view to agreeing on facts for purposes of trial or with a view, otherwise, to agreeing on arrangements to shorten or facilitate the trial of the matter, to be allowed on the same basis as counsel fees at trial.

1968

HOME JUICE CO. *et al* *v.* ORANGE MAISON LTÉE

Jackett P.

This item was designed for a case where a trial of an action might take some time and where counsel who are to conduct the hearing have taken steps, other than merely routine steps, with a view to making some special arrangement, such as arriving at an agreement as to facts, whereby the trial might be conducted more expeditiously and more efficiently. In this case I am told that there were a number of telephone conversations between junior counsel for the respondent and counsel for the applicant concerning arrangements for the attendance at the hearing for purposes of cross-examination of persons who had sworn affidavits constituting part of the respondent's material. In my view, no allowance should have been made under Item 36A in this case.

The taxing officer allowed a net amount of $600 in respect of the claim for $3,150 for preparation. This allowance was made under Item 8 of Tariff A, which reads:

> 8. Preparation for trial, including notice of trial, notices to produce and admit, inspections, subpoenas, etc. 30 00
> (Subject to increase in the discretion of the taxing officer)

I find it hard to believe that, in the absence of very special circumstances, of which there are no indications here, any allowance should ever have been made on a party and party taxation in connection with a summary application, for preparation for the hearing, of more than $150. This amount will, therefore, be reduced to $150.

I cannot part from the matter without expressing my apprehension at the way in which party and party costs have apparently tended to grow in magnitude. When the rule of court provides for an item of $30, subject to a discretionary increase, and the party feels justified in claiming over $3,000 and the taxing officer feels justified in increasing the amount of $30, in the case of a one-day hearing, to $600, it somehow seems to me that things have gotten out of proportion.

I should have thought that a bill of over $1,600 is about three times as much as a party and party bill of costs for a summary application such as this should be. I note, for example, that allowance was made in respect of both senior and junior counsel fees. I have difficulty in believing that a proceeding of this kind warranted fees for both leading and junior counsel on a party and party taxation. After discussing the matter with him, I am satisfied that, had an

application been made to the Judge who heard the application to fix a lump sum in lieu of taxed costs under Rule 261, it is improbable that he would have fixed more than $500. I myself doubt whether any matter of this kind should ever result in party and party costs exceeding that amount.

I suggest that the presiding Judge should, in the future, entertain any application made at the time of pronouncing judgment to fix a lump sum in lieu of taxed costs in all relatively simple proceedings such as this one.

The taxation is therefore revised and the amount thereof is reduced by $650 to $1,003.50. The matter is returned to the taxing officer to recertify the Bill of Costs accordingly.