

CITATION: Corless v. Bell Mobility Inc., 2024 ONSC 204
COURT FILE NO.: CV-08-00360837-0000
DATE: 20240109

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: JASON CORLESS and BERNIE COX, Plaintiffs

– and –

BELL MOBILITY INC., Defendant

BEFORE: Justice E.M. Morgan

COUNSEL: *Joel Rochon, Golnaz Nayerahmadi, and Sarah Fiddes*, for the Plaintiffs

Dana Peebles, Ljiljana Stanic, and Solomon McKenzie, for the Defendant

HEARD: October 30, 2023

COSTS OF MOTION TO AMEND CLASS

[1] The Defendant sought to amend the certified class definition either to exclude part of the class, or, alternatively, to compel the addition of a new sub-class.

[2] On November 3, 2023, I dismissed the Defendant’s motion. The Plaintiffs are entitled to costs. Counsel for the Plaintiffs have submitted a Bill of Costs in which they seek the all-inclusive amount of \$88,296.33 in partial indemnity costs.

[3] Counsel for the Defendant says this is too high, and suggests a costs payment of \$45,000, preferably payable in the cause. Defendant’s counsel do not indicate why this particular amount is appropriate, and have not submitted a Bill of Costs of their own. I can only surmise that it is half (rounded up) of what the Plaintiffs seek, and it is Defendant’s view that the Plaintiffs were, in essence, only half successful in the motion.

[4] In their written submissions, most of what the Defendant takes issue with is the advocacy engaged in by Plaintiffs’ counsel. For example, Plaintiff’s counsel says that the Defendant’s motion was a “re-litigation of certification,” that it was “ill conceived,” there were “thousands of documents” to be reviewed for the motion, that a “painstaking review” was necessary, and that there was a need to “engage in a reconstruction of events.”

[5] I do not disagree with Defendant's counsel. None of those accusations is really accurate, and overall the approach of Plaintiff's counsel to the issue of costs is a bit much. I would not have described the motion in terms of it being such a monumental task with which to engage. Although the motion was substantial enough not to be a bunny hill, it was more of a blue square than a black diamond.

[6] That said, the Plaintiffs' rhetorical excess does not really impact on the amount claimed. Plaintiffs' counsel have submitted a proper Bill of Costs, and I see no reason to question the hours recorded there.

[7] The Plaintiffs felt strongly about the need to resist the Defendant's desire to dramatically reduce the class size at this late juncture in the litigation, and they put in the time and effort that it took to defend against the Defendant's motion. Although the costs seem high for a motion to amend, the stakes were also high given the large number of class members that would have been disenfranchised had the Defendant succeeded. Plaintiffs' counsel gave it their all and is now charging their all.

[8] Defendant's counsel does make one point which resonates. The Plaintiffs' position is that the Defendant's motion was itself an "abuse of process." This allegation prompted a far more vociferous reply than would otherwise have been necessary, and made the matter more protracted than need be. The Defendant's motion was not successful, but it was not an abuse or improper in any sense of that term. Someone always loses each motion, but here is no abuse of process in the losing side's having brought it.

[9] I would deduct from the costs sought by Plaintiffs' counsel an amount that reflects this aspect of their defense of the motion. The Defendant was compelled to fend off the unwarranted abuse of process allegation. Using a rough approximation, I would therefore reduce and round down the Plaintiff's request by about 20%.

[10] The Defendant shall pay costs of the motion to the Plaintiffs in the all-inclusive amount of \$65,000.

[11] Although the Defendant says that its request to pare down the class was only deferred, its motion to amend was dismissed. I see no reason to make the costs payable in the cause. They are payable within 30 days.

Date: January 9, 2024

Morgan J.