

COURT FILE NO.: 05-CV-284491SR

DATE: January 21, 2008

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

GROUPE ATLANTUS

Plaintiff

- and -

**AVI BENMOISE, MILORAD SORMAZ,
1498045 ONTARIO INC. o/a
NATIONAL BRAND CLEARANCE and
BRAND NAME LIQUIDATIONS INC.**

Defendants

COSTS ENDORSEMENT

Perell, J.

Released: January 21, 2008

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**AVI BENMOISE, MILORAD SORMAZ, 1498045 ONTARIO INC. o/a
NATIONAL BRAND CLEARANCE and BRAND NAME LIQUIDATIONS INC.**

Defendants

COUNSEL:

Yan David Payne for the Plaintiff

R. Andrew Biggart for the Defendant Avi Benmoise

COSTS ENDORSEMENT

PERELL, J.

[1] I released my Reasons for Judgment in this action on November 29, 2007 following a oneday trial. This is my costs endorsement.

[2] The Plaintiff recovered a judgment for the amount in Canadian currency that equals 41,743.84 euros as of November 27, 2007 with a *per diem* adjustment of 8.49 until the release of the Reasons for Judgment. The approximate amount of the judgment is \$63,000.00.

[3] The Plaintiff claims costs as follows: (a) \$22,784.33 for fees, apparently omitting GST; (b) \$4,823.51 for disbursements, presumably inclusive of GST; and (c) \$4,544.33 (Cdn) plus \$3,795.00 (U.S.) plus €2,706 (euros) all for Mr. Atlan's travel disbursements, which by my reckoning is approximately \$12,000.00 for travel expenses. Thus, the Plaintiff claims costs on a partial indemnity basis of approximately \$40,000.00 all inclusive.

[4] For the reasons that follow, I order the defendants Avi Benmoise and 1498045 Ontario Inc. to pay the Plaintiff costs in the amount of \$38,000.00 all inclusive of fees, disbursements, and GST.

[5] My principle reason for awarding this sum is that, in my opinion, in all the circumstances, including the objections raised by Mr. Benmoise, it is a fair and reasonable award on a partial indemnity basis.

[6] I note in particular the following factors.

[7] The Plaintiff was totally successful in obtaining judgment in the main action and in defending the counterclaim. In the counterclaim, Mr. Benmoise claimed damages of \$250,000 for an alleged assault by the Plaintiff's representative. Mr. Benmoise abandoned his counterclaim – at the trial – and his defence to the action on the promissory note was without any merit.

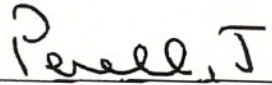
[8] Mr. Benmoise is largely responsible for changing what was a simple collection matter commenced under the simplified procedure into a considerably more expensive ordinary action, for which there was no defence. The Plaintiff had waived recovery of any amounts in excess of \$50,000.00, and had the action proceeded under the simplified procedure, there would not have been examinations for discovery with the necessity of Mr. Atlin coming to Canada from France on several occasions.

[9] Although no dockets were provided, the Plaintiff submits that its counsel, Mr. Payne, claimed 128 hours at an hourly rate of \$225.00 and other lawyers claimed 18.7 hours at an hourly rate of \$100. The mathematical total of these claims is \$30,670.00, but, as noted above, the counsel fee claimed is \$22,784.33 exclusive of GST. Thus, it appears that Mr. Payne has discounted his partial indemnity fee by approximately 25%, which goes some distance in addressing the submissions of Mr. Benmoise that the costs should be reduced. My further reduction of approximately \$2,000.00 takes into account the other possible objections raised by Mr. Benmoise, including the objection to the expenditure for the transcript of the criminal proceedings.

[10] Costs in the amount of approximately \$38,000.00 should have been reasonably contemplated where the action proceeds as an ordinary action and the defendant pursues a substantial counterclaim.

[11] Accordingly, I awards costs in the amount of \$38,000 on a partial indemnity scale.

[12] Order accordingly.


Perell, J.

Released: January 21, 2008