

COURT FILE NO: 07-CL-7122

DATE: 20081212

SUPERIOR COURT OF JUSTICE - ONTARIO

Commercial List

RE: MICHAEL J. QUILLING, IN HIS CAPACITY AS COURT APPOINTED RECEIVER FOR
COURTNEY WALLIS SIMPSON

Applicant

- and -

NICHOLAS SMITH ATTORNEY IN FACT IN CANADA FOR LLOYD'S UNDERWRITERS

Respondent

BEFORE: The Honourable Mr. Justice Sidney N. Lederman

COUNSEL: *Lincoln Caylor & David Rainsberry,*
for the Applicant

Maanit Zemel,
for the Respondent

ENDORSEMENT
AS TO COSTS

[1] The applicant Receiver who was successful on this application seeks its costs on a partial indemnity basis in the amount of \$63,291.82 (including disbursements).

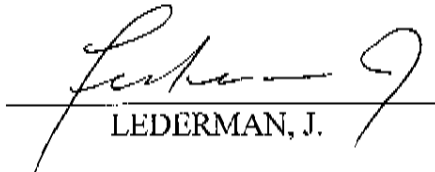
[2] The Respondent submits that the applicant is not entitled to any costs as the applicant is the Receiver for Simpson, a person who committed fraudulent acts for which she has been criminally convicted. The respondent submits that an award of costs in favour of the applicant, in these circumstances, would be contrary to public policy. Alternatively, the respondent submits that the costs sought are excessive and are unreasonable and should be in an amount that is equal or similar to the respondent's costs of \$8,388.08.

[3] The applicant in effect was acting for the benefit of the victims of Simpson's fraud in the sense that the interpretation of the policy advanced by the receiver, which the Court accepted, will result in a larger recovery of insurance proceeds for those individuals. Awarding costs to the applicant would not be contrary to public policy.

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[4] As to the quantum sought, a Court should have regard to the factors set out in Rule 57.01(1). The decision will result in a significant recovery for the insurance claimants. However, the issues in the application were not complex. They turned on the interpretation of the words "occurrence" and "series of related occurrences" in the insurance policy. There was a dearth of case law on the issue. An agreed statement of facts had been prepared. There were no affidavits and thus no cross-examinations on affidavits. The application took approximately 2 hours of court time.

[5] Having regard to the above factors and the principle of proportionality and, in particular, what amount an unsuccessful party could reasonably expect to pay in respect of such an application, I fix the costs of the applicant at \$20,000 all inclusive, payable by the respondent within 30 days.


LEDERMAN, J.

Date: December 12, 2008