



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: BK-24-03003083-0031 DATE: In Writing

NO. ON LIST: _____

TITLE OF PROCEEDING: **CREATIVE WEALTH MEDIA FINANCE CORP. v BAKER &
MCKENZIE LLP et al. BK-24-03003083-0031**

BEFORE JUSTICE: **CAVANAGH**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Jason Berall	CREATIVE WEALTH MEDIA FINANCE LENDING.	berallj@bennettjones.com
Natalia Vandervoort	BORDEN LADNER GERVAIS LLP	nvandervoort@blg.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
David Ullmann	Jason Cloth et al	dullmann@blaney.com
Andrew Sahai	Creative Wealth Media Lending Inc.	sahaia@bennettjones.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Michael Nowina Bryan Tannenbaum	TBD Restructuring	michael.nowina@bakermckenzie.com btannenbaum@tdbadvisory.ca
Arif Dhanani	Trustee of Creative Wealth Media Finance Corp.	adhanani@tdbadvisory.ca

COSTS ENDORSEMENT:

[1] Borden Ladner Gervais LLP (“BLG”) brought a motion for directions in respect of the production of Creative Wealth Media Finance Corp. (“CWMF”) records to TDB Restructuring Limited in its capacity as the bankruptcy trustee of CWMF (the “Trustee”).

[2] BLG held the records of CWMF because of a joint retainer between CWMF and its principal, Jason Cloth. Jason Cloth is also the 50% shareholder and an officer and director of Creative Wealth Media Lending Inc. and related limited partnerships and general partnerships (together, “CWML”) which was separately represented on the motion. The documents in respect of the motion for directions included documents of CWML.

[3] On the motion, there were originally three categories of documents in dispute. At the hearing, one category, category (b), needed to be addressed.

[4] The Trustee took the position on the motion that BLG should be directed to produce the requested documents to the Trustee. CWML took the position that the documents should be provided to Kroll, an independent forensic investigator appointed to conduct an investigation to extract the CWMF books and records from intermingled records. Jason Cloth took the same position.

[5] In my endorsement in respect of the motion, I directed that the category (b) emails be provided to Kroll to be dealt with in the same way as the category (a) emails.

[6] BLG does not seek costs of its motion for directions.

Costs claimed by CWML and its related limited partnerships and general partnerships

[7] CWML and its related limited partnerships and general partnerships (together, “CWML”) seek costs of the motion from the Trustee on a substantial indemnity scale in the amount of \$25,930.96 because (i) the Trustee relitigated issues already decided by Penny J., and (ii) the Trustee rejected CWML’s settlement efforts to resolve the motion by providing the documents to the independent expert.

[8] The Trustee submits that there is no basis for an award of costs on an elevated scale.

[9] The motion was not decided on the basis that issue estoppel applied because the Trustee was relitigating issues already decided by Penny J. The decision on the motion was stated to be consistent with the endorsement of Penny J. This is not a finding that issue estoppel applied. The motion was decided on the basis that I could not determine on the evidence before me that the category (b) emails do not include emails of third parties that are not related to the property and affairs of CWMF and that the Trustee is not entitled to receive. CWML is not entitled to an award of elevated costs because the Trustee relitigated issues already decided by Penny J.

[10] The fact that the Trustee did not accept the position of CWML and resolve the motion on this basis does not entitle CWMF to an award of elevated costs. The Trustee was entitled to advance its arguments and was not required to settle. See *Davies v. Clarington (Municipality) et al.*, 2009 ONCA 722 (CanLII), at paras. 42-46.

[11] Costs should be awarded on a partial indemnity scale.

[12] The Trustee submits that the amount claimed for costs is excessive. The Trustee claimed sought partial indemnity costs on the motion in the amount of \$7,396 on the basis that the motion for directions was a narrow one. The Trustee submits that \$7,396 is a reasonable amount to award to CWML for this motion.

[13] The Costs Outline of the Trustee shows that counsel spent a total of 43.2 hours on this motion.

[14] The Costs Outline of CWML shows that counsel spent a total of 31.5 hours on the motion. CWML seeks partial indemnity costs using hourly rates that are 60% of actual rates. The time spent and rates charged are reasonable. The amount claimed is within a range of costs that the Trustee could reasonably expect to pay if its position on the motion was not accepted.

[15] I fix costs to be paid by the Trustee to CWML on a partial indemnity scale in the amount of \$17,287.31. These costs are to be paid within 30 days.

Costs claimed by Jason Cloth

[16] Jason Cloth seeks costs of the motion on a substantial, indemnity scale in the amount of \$24,120 plus HST.

[17] He submits that he was a proper responding party to this motion because he had an interest in the documents in the possession of BLG and he was entitled to be heard to prevent the Trustee from taking possession of books and records which do not belong to the bankrupt.

[18] Mr. Cloth also submits that the Trustee sought to relitigate the issue already decided by Penny J. such that the issue on the motion was *res judicata*. Mr. Cloth submits that elevated costs are justified because the Trustee refused to settle. I addressed these submissions in my endorsement with respect to costs claimed by CWML.

[19] Mr. Cloth submits that the Trustee made serious and unfounded allegations against him in its factum and that the Trustee attacked Mr. Cloth's reputation by unnecessarily making reference to a finding against Mr. Cloth in another jurisdiction. Mr. Cloth submits that these submissions were aimed at harming his reputation and should attract costs on an elevated scale.

[20] The Trustee responds that it did not make unsubstantiated allegations against Mr. Cloth and notes that Court did not so find in the endorsement.

[21] There were no findings on the motion that the Trustee engaged in misconduct that justifies an award of costs on an elevated scale. I do not find that the Trustee made allegations on this motion that justify an award of costs on an elevated scale.

[22] The Trustee submits that the Court should award costs against Mr. Cloth because:

- a. The Court did not accept his submissions;
- b. He waited until very late to consent to release of documents that should have been provided to the Trustee earlier.
- c. He failed to submit a costs outline at the hearing and did so a day after the motion was decided.

[23] I do not accept the Trustee's submissions that Mr. Cloth engaged in conduct that justifies an award of costs against him.

[24] The Trustee submits, in the alternative, that Mr. Cloth's costs are grossly excessive.

[25] Mr. Cloth's Costs Outline shows that his counsel spent 32 hours on the motion. He seeks partial indemnity costs based on 60% of usual hour rates for his counsel. The hours spent and rates claimed are reasonable.

[26] I fix costs to be paid to Mr. Cloth by the Trustee on a partial indemnity scale in the amount of \$16,080. These costs are to be paid within 30 days.

September 12, 2025

Cavanagh J.