

SUPREME COURT OF NOVA SCOTIA

Citation: I.M.P. Group Ltd. v. J. Ray McDermott Canada, Ltd., 2014 NSSC 38

Date: 20140128

Docket: Hfx No. 349438

Registry: Halifax

Between:

I.M.P. Group Limited, a body corporate

Plaintiff

v.

J. Ray McDermott Canada, Ltd., a body corporate

Defendant

DECISION ON COSTS

Judge: The Honourable Justice Allan P. Boudreau

Heard: October 28, 29, 30, and 31, 2013, in Halifax, Nova Scotia

Final Written Submissions: January 22, 2014

Counsel: John Merrick, Q.C. and Kelly Buffett, for the Plaintiff
George W. MacDonald, Q.C., for the Defendant

By the Court:

INTRODUCTION

[1] The main decision in this matter was handed down November 28, 2013. Success was divided and the parties have not been able to agree on an allocation of costs.

BACKGROUND

[2] I.M.P. had originally claimed approximately \$135,000 in unpaid invoices from the defendant, Secunda Marine (“Secunda”). In my decision, I awarded I.M.P. \$70,306.85 plus pre-judgment interest at the rate of 3.5% per annum from January 1, 2011 until paid. There were five offers and counter-offers commencing October 25, 2013 to October 27, 2013. These were as follows:

1. October 25, 2013, by e-mail, Secunda offered to pay \$70,000.00 and release any claim to the boat, and other items in dispute:
2. On October 25, 2013, I.M.P. verbally rejected the above offer and countered with an offer of \$85,000, all inclusive.
3. On October 26, 2013, Secunda by e-mail, reiterated its previously and consistently stated position that a 50/50 split of liability would be a fair settlement and upped its offer to \$75,000 with I.M.P. releasing any claim to all the items in dispute.

4. On October 26, 2013, by e-mail I.M.P. continued to reject the notion of a 50/50 split and restated its October 25, 2013 offer to settle for \$85,000, all inclusive.

5. On October 27, 2013, by e-mail, Secunda again offered \$75,000 to settle the matter, but this time Secunda would release any claim to all the disputed items. I.M.P. rejected Secunda's latest offer and made no counter offer.

ANALYSIS

[3] The basic underlying finding in my decision is that a 50/50 split of liability or responsibility for the losses was the only fair and reasonable resolution of the litigation. I therefore awarded I.M.P. 50% of its "contentious" invoices plus the apparently agreed upon reduced amount for the table saw. It must be remembered that Secunda never contested that it owed the amount for the table saw. In fact, Secunda had sent a cheque for this amount to I.M.P. early on when the invoices were rendered, but I.M.P. refused to cash the cheque and never did so. That is the reason why 100% of the cost of the table saw was added to the award, not because of any contest by Secunda and success by I.M.P.

[4] Therefore, in my view, the amount for the table saw should not be included as part of my award for costs purposes, as contended by I.M.P. I find this notion improper. I would deduct the amount of the table saw from the contested invoices

to arrive at the amount for costs purposes. The success of I.M.P. and the award would, in effect, be \$67,850.23 plus pre-judgment interest.

[5] When one considers the above, the argument that I.M.P. was more successful at trial than Secunda loses its merit. I consider Secunda's offers to have been reasonable; however, I will also consider the lateness of Secunda's offers of October 25-27, 2013. The trial was set to commence October 28, 2013. In the circumstances I would not award Secunda any costs, as they propose.

CONCLUSION

[6] In the final analysis, considering all of the above, I concluded that the most appropriate and fair disposition is to require the parties to bear their own costs and I so order.

Boudreau, J.