

Court File Number: CU-17-11773-00CL

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Bridging Finance Inc.

Plaintiff(s)

AND

Thomas Canning et al

Defendant(s)

Case Management ☐ Yes ☐ No by Judge: _____

Counsel	Telephone No:	Facsimile No:
see counsel slip -	attached	

- ☐ Order ☐ Direction for Registrar (No formal order need be taken out)
☐ Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
☐ Adjourned to: _____
☐ Time Table approved (as follows): _____

This endorsement deals with the
second dispute I heard on May 14/18
concerning the fees and disbursements
of Blaney McMurtry.

On December 1/17 I granted
leave to William Thomas to bring
the motion concerning the fees/disbursements.
As I indicated in that endorsement
the payment of fees/disbursements

25 May 18

Date

McEwen

Judge's Signature

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is governed by s. 5.1 of the Accommodation Agreement which provides generally for payment of reasonable fees & disbursements in connection with the Accommodation Agreement or the Monitor Order. Any fees & disb. relating to work done in opposition to motions brought by the Monitor Agent in connection with or transaction resulting from the RISP are not allowable.

There are three accounts in question and I will deal with each in turn.

First is the Apr 30/17 account in the amount of \$20,916.³⁰ inclusive.

In argument, Bridging concedes that most of the account is payable but complains that the account has problems in that the docket entries are vague and not well-particularized.

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I accept that there is some lack of detail. For example, there are no specific allotments of time set out as there is in the subsequent two accounts. Further there is some lack of specificity with respect to the deleted telephone calls.

Overall, however, there are minor complaints. In my view, they warrant a 10% reduction of this account for fees and I so order. HST is payable on the remaining amount.

I should point out that in conducting my analysis of all three accounts I am taking into account the wording of s.5.1 of the Accommodation Agreement as well as the principles set out by the Court of Appeal in Boucher v. Public Accountants Council 2004 CanLii

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14579 (ONCA). My objective is to arrive at an amount that is reasonable rather than a Fixed amount that would be calculated by analysing each item and conducting what amounts to an assessment of the Bills of Costs provided. Instead, I have Fixed Costs keeping in mind section 5.1 ^{the} principle of proportionality and as well the general principles/feature set out in Rule 57.01.

The second account, which is the largest - totalling \$65,133.77 is the most contentious. In June/17 the Monitor complained that management of TCL was, amongst other things, hindering and frustrating the Monitor's ability to perform its duties and moreover the monitor (see subpara 7(a) of the June 7/17 report ⁱⁿ).

During this time period Mr Thomas

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Concedes at para 73 of his 2017 affidavit that Blaney, McMantry, was intimately involved on a daily basis.

Bridging submits that TCL's conduct should factor into an assessment of the reasonableness of the legal account.

Bridging also raises three specific complaints:

- ① lack of particulars to truly understand the docket entries;
- ② the May 18/17 motion brought by TCL regarding its alternative business plan; and
- ③ TCL's opposition to the relief sought by the Monitor in the June 21/17 motion.

Further portions of ~~these~~^{these} his account were redacted. I, however, reviewed the unredacted accounts and will comment below.

In considering Bridging's submissions I should note that no cross-examinations

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were conducted of Mr Thomas. I am not being critical given the legal cost of doing so in comparison to the amounts in issue, but Bridging did have this opportunity and chose not to pursue it.

I ought to also note that Mr. Thomas submits that there are sufficient particulars in the accounts; the time spent is reasonable and comparable to the Monitor; the fact they lost the May 18/17 motion does not make the fees "unreasonable"; and last, that the fees incurred with respect to the June 21/17 motion - they did not oppose the motion -

With respect to the second account I agree that there are problems with specificity, particularly with respect to emails and telephone calls. My review, however, demonstrates the problem is a minor one that warrants

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only a 5% reduction of the overall fee account.

With respect to the May 17 motion, TCL's alternative plan was not accepted by the court. Further the Monitor was rightfully very critical of the plan. In my view fees associated with this motion are not reasonable and were incurred in opposition to the Monitor. I have reviewed the relevant account entries. By my calculation a further 15% reduction in fees is appropriate based on apparent time spent preparing for and attending at the motion.

With respect to the June 17 motion TCL advanced arguments through Mr. Thomas's affidavit in support of increased claims over Bridging and adjoining Richter motion citing

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amongst other things, inappropriate activities of the Monitor.

In my view these two positions stated out by TCC were unreasonable. The motion of the insured creditors was unsuccessful and the Monitor was ultimately discharged on its terms. The fee portion of the motion was successful.

I have reviewed the line that went into the motion and reduced it by approximately 2/3, to take the above into account. Overall this reduces the account and a further 20% reduction in fees is appropriate.

Last, are the redirected docket. There are few, but they appear unrelated to the provisions envisioned by the Accommodation Agreement. A further 2.5% reduction is reasonable.

Overall -- the second account will

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be reduced by 42.5%. The modest disbursement is fine.

The third account is minor in nature and I see nothing objectionable about it. It should be paid in full.

If the parties cannot agree on costs of this or other disputes it can be spoken to at a 9:30 spot.

McE

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Judges Initials TM

1. Dated June 30/17