

CITATION: Gamma Machinery Inc. v. Katarzynski, 2012 ONSC 88
COURT FILE NO.: CV-10-411456
MOTION HEARD: 20110711
REASONS RELEASED: 20120111

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: Gamma Machinery Inc.
Mark One Machinery Sales, Ltd., and
GN Packaging Equipment (2010) Inc. Plaintiffs

v.

Jacek Katarzynski, Edward Brunott, and Gary Eastwood,
carrying business as Projk, GN Packaging Machinery Inc.,
and IJM CNC Machining Inc. Defendants

BEFORE: MASTER D.E. SHORT

COUNSEL: M. Christine Roth
for the Defendants (moving parties) Fax: 416-926-8968

J. Howlett
for the Plaintiffs Fax: 416-913-1444

HEARD: July 11, 2011

Reasons for Decision

I. Overview

[1] A commercial bankruptcy often results in complications and difficulties for those who acquire the assets of the insolvent company. The difficulties that got the company into its insolvent condition may ricochet with unintended consequences for those who hope to carry on the previous business of the now insolvent corporation.

[2] The Defendants, Katarzynski, Brunott, and Eastwood, (the "individual defendants") move for Security for Costs against two of the Plaintiffs, Mark One Machinery Sales Ltd. ("Mark One"), and GN Packaging Equipment (2010) Inc. ("GNP 2010").

[3] The main issue in this action is the ownership of certain intellectual property ("IP") and other assets that were originally purchased by one or more of the Plaintiffs, Gamma Machinery Inc. ("Gamma") and Mark One, from the bankruptcy trustee of GN Packaging Equipment.

[4] The third Plaintiff, GN Packaging Equipment (2010) Inc. ("GNP2010") is a corporation that is said to have been incorporated for the purpose of carrying on a Joint Venture between the principals of Mark One and Gamma Machinery Inc. and the individual defendants.

[5] Mark One submits that the motion should be dismissed, upon the grounds that an Order for security for costs would not be just, because Mark One has a strong claim on the merits.

[6] GNP2010 submits that the motion should be dismissed, upon the grounds that an Order for security for costs would not be just, because GNP2010 has a minor role in this litigation and was only added as a Plaintiff in order to obtain an accounting of the money allegedly taken by the Defendants from its bank account.

[7] GNP2010 has not been organized and was never used for the Joint Venture. Thus the defendants argue that there is good reason to believe that the corporation has insufficient assets in Ontario to pay the costs of the defendants.

II. The Ownership of the IP and Other Assets

[8] At the outset Sam Cho and Mark Wilenkin, the principals of Gamma and Mark One, respectively, decided to purchase the IP and items including a "LallyPak" machine from the Bankruptcy Trustee of GN Packaging Equipment.

[9] They agreed that each corporation would contribute 50% of the purchase price and own 50% of a new corporation to be formed to own the assets and operate them. Mark One confirmed the agreement in a fax letter to Gamma on January 29, 2010.

[10] The invoice from the Bankruptcy Trustee was initially made out to Mark One. Cho and Wilenkin asked that it be reissued to Gamma for tax reasons (GST) and because it was easier for Gamma to deal with the Bankruptcy Trustee. This was done.

[11] Mark One paid \$75,000.00 (U.S.) and Gamma paid \$148,650.00 (U.S.) to the Bankruptcy Trustee for the Invoice for the IP and the LallyPak machine.

[12] The defendants assert that Cho and Wilenkin, subsequently entered into a joint venture with the individual Defendants, former employees of the bankrupt company. The defendants allege the plan was that Cho and Wilenkin would contribute all of the initial capital and own 50% of the shares of the new corporation, and the Defendants would run the day to day business operations and own the other 50% of the shares. It is asserted that GNP 2010 was incorporated by Cho for that express purpose.

[13] Gamma and Mark One did not transfer ownership of the IP to anyone else.

III. The Action

[14] In this Action, the Plaintiffs seek the return to the Plaintiffs of certain computer servers, computer equipment and software, intellectual property, spare parts, and some other miscellaneous office equipment and furniture, which they allege were illegally taken from the plaintiffs by the defendants (the "Assets").

[15] Subsequently, Katarzynski, on behalf of the Defendant, PROJK, offered to purchase from Cho some of the Assets that Cho was intending to sell on behalf of GN Packaging Equipment (2010) Inc. It is asserted by the defendants that the Assets were sold by Cho to the Defendants, pursuant to an Asset Transfer Agreement, dated July 21, 2010.

[16] The key assertion by the defendants is that at no time did Mark One or Wilenkin have an ownership interest in the Assets. They assert Mark One only made such a claim with the commencement of this Action.

IV. Extent of Financial Disclosure

[17] The Plaintiff, Mark One is a corporation incorporated pursuant to the laws of the State of New York, and is ordinarily resident outside of Ontario, carrying on business in Bay Shore, New York.

[18] Despite the request of the Plaintiff's solicitor, Mark One has refused to provide any details of its assets in Ontario, but clearly is not without significant assets elsewhere.

[19] The defendants argue that Mark One has admitted that the computer servers and intellectual property purchased by the Defendants pursuant to the Asset Transfer Agreement were not purchased by Mark One but were purchased by Gamma.

[20] The Plaintiff GNP 2010 was incorporated by the Principal of Gamma, Sam Cho, for the purpose of carrying out a Joint Venture.

[21] No steps were taken by Cho to organize GNP2010 other than the opening of a bank account. GNP2010 has not provided any information to the Defendants concerning its financial picture and the assets, if any, it has in Ontario.

V. Position of Plaintiff

[22] In their factum the plaintiffs assert:

“7. The Plaintiff corporations invested more than \$400,000.00 into the joint venture. The Defendants invested nothing and purchased nothing, and were paid salaries.

8. The joint venture was in operation from February to August, 2010, when it broke up. Unfortunately, it was very poorly documented as the parties had been unable to agree upon the terms of a Shareholder Agreement. When it broke up, the Defendants unlawfully took the computer servers containing the IP and other assets and have refused to return them.”

[23] The Defendants claim that they have a binding agreement with Cho (the July 21, 2010 Agreement) to buy the servers and IP for a price of approximately \$16,000.00, and that they are not liable for any of the substantial damages claimed by the Plaintiffs. The Defendants also claim that Cho had purchased all of the assets personally from the bankruptcy trustee, and that Mark One was not involved and did not pay anything.

[24] The Plaintiff corporations deny that any such binding agreement exists, demand that the Defendants return their property forthwith, and claim all damages suffered as a result.

[25] In furtherance of this position they sought interim and interlocutory injunctions.

VI. Injunction Decisions

[26] As a consequence of the vigorously contested injunction proceedings, this motion is somewhat out of the ordinary.

[27] The unusual feature of this case is that before I, as a master, come to address this motion, two judges of this court have already dealt with and decided important factual issues.

[28] The plaintiff sought an interim injunction to recover the subject machinery and intellectual property before Justice Low. That motion was unsuccessful.

[29] On February 8, 2011 the motion for an interlocutory injunction was dealt with by Justice Penny. The full relief sought was described by him as "a mandatory, interlocutory injunction requiring the Defendants to hand over certain intellectual property (IP) to the Plaintiffs pending trial or, in the alternative, for an Order under Rule 44, requiring the Defendants to transfer possession of the IP to the Plaintiffs pending trial (or in the further alternative, requiring the Defendants to post security for their possession of the IP pending trial."

[30] In his endorsement Justice Penny noted that Henry J. once said in *Pilot Insurance*, the interlocutory injunction is an extraordinary remedy only granted in exceptional circumstances. There are three requirements that must be met:

1. **The plaintiff must show there is a serious issue to be tried or perhaps in a mandatory injunction, a strong prime facie case;**
2. The plaintiff must show it will suffer irreparable harm, i.e., harm that is not compensable by an award of monetary damages; and
3. The plaintiff must show that the balance convenience supports the grant of the injunction, in the sense that the harm to the plaintiff if the injunction is not granted exceeds the harm to the defendants if it is.

[31] The Plaintiffs started an action and bought an Interim Motion for an injunction seeking return of the IP. Justice Low dismissed the Motion for Interim Relief. She held that there was a serious issue to be tried about whether the IP had been sold to the Defendants or not. She was not satisfied, however, that the Plaintiffs would suffer irreparable harm.

[32] Justice Penny observed in his reasons:

It seemed to Justice Low that there was no anticipated harm that would not be calculated in damages. Nor was Justice Low convinced that the balance of convenience favoured the Plaintiffs....

The law on the return of an interlocutory injunction from a prior Motion for Interim Relief is stated by Sharpe J. in his well known text on *Injunctions and Specific Performance*, para. 2.57. The hearing of an Interlocutory Injunction proper following the granting of an Interim Order is a hearing *de novo*," not an appeal from the prior order, which was necessarily made on an incomplete evidentiary record.

[33] Following Low J.'s Order of November 12, 2010, there were cross examinations and "extremely limited" additional Affidavit evidence was filed.

[34] Penny J. found:

"Although there is an agreement signed by Mr. Cho (who incorporated GNP (2010)) on behalf of GNP (2010), I do accept that there is a serious issue to be tried concerning the validity of that agreement."

[35] He was not satisfied that the requirement to establish irreparable harm had been met:

"In my view, the Plaintiffs have not made out a case that they will suffer irreparable harm, i.e., any damage that could not be

compensated for by an award of money. All of the harm alleged relates to lost business opportunities, some specific, relating to the Lally Pak and the Rexam machines, some more speculative relating to possible future sale that might result if the Plaintiffs had the GNP IP. All of this harm, it seems to me, is quantifiable and can be compensated by an award of money damages."

[36] In addressing the balance of convenience and coming to his conclusion on the motion, his Honour held:

"Further, in my view, the IP for the old GNP Machine is crucial to the day to day enterprise of the Defendants. They are conducting a business servicing old GNP Machines. They are subject to no non-competition agreements *vis-a-vis* the Plaintiffs and are not otherwise subject to any other restrictions on the pursuit of their financial self-interest. While there may be serious issue for trial that the ATA is invalid, there is also an equally serious issue for trial that the AT A is valid. Loss of the use of the IP would deprive the Defendants of their livelihood.

The Plaintiffs have other, longstanding, historical businesses to rely on. The GNP IP is not critical to their existing businesses.

Even if there were irreparable harm, it seems to me the harm to the Defendants would exceed the harm to the Plaintiffs if an injunction in favour of the Plaintiffs were granted.

Accordingly, the Motion for an Interlocutory injunction is dismissed."

[37] The Plaintiffs also sought an Order, in the alternative, under Rule 44, either for the return of the IP or for a requirement that the Defendants post security if they retain the IP pending trial.

[38] In that regard Justice Penny held:

The test under Rule 44 is well settled. The Plaintiff must show there are "substantial grounds" for the grant of the remedy sought. The test for a Rule 44 Order is similar to, but not the same as, the test for an injunction. For example, Rule 44 does not require proof of irreparable harm (see *Clarke Door* [1996] O.J. No. 238 at para. 23). This is why, for example, Rule 44 does not automatically provide that the Plaintiffs will be awarded possession but allows for an Order that the Defendant retain possession but post security. In fact, given the interlocutory nature of this relief, it may well be that regardless of which party is awarded possession, it would be appropriate for that party to post security. "Substantial grounds" has been held to impose a more stringent test than the "serious issue to be tried" test but a less stringent test than the "strong prima facie case" test.

[39] A portion of the IP sought related to the old GNP business and machines. The Defendants conceded, during argument, that they would post security of \$50,000 (which is what the Plaintiffs paid for it) in exchange for retaining possession of the GNP IP pending trial.

[40] Commenting on this offer, the motion judge noted:

"This, in my view, is the best the Plaintiffs are going to do, as in the absence of this concession, **I am not sure I would have been prepared to find that the 5 requirements of Rule 44.01(1), especially items c) and d), have been met, in light of the signed ATA of July 21, 2010 and the significant threshold imposed by the "substantial grounds" test.** [my emphasis]

Accordingly, I order that possession of the...IP remain with the Defendants pending trial, provided that, within 14 days, the Defendants pay \$50,000 into Court to the credit for this action or provided a \$50,000 bond or letter of credit, securing their obligation to post security for their continued possession in that amount."

[41] Significantly his endorsement continued, in part:

It is also appropriate, in any view, that other terms of my disposition of this Motion be imposed to clarify and facilitate the future conduct of these proceedings.

The further terms of my order are as follows:

If the Defendants fail to post the required security within 14 days, they shall immediately turn the GNP IP over to the Plaintiffs. In that event, the Plaintiffs shall post \$50,000 of security against their ongoing possession of the IP pending trial.

[42] Ultimately he held that in his view success was divided on the Motion and made no Order as to Costs of the motion before him.

VII. Shifting Onus

[43] It seems to me that in cases of this nature, the onus is first on the moving party to establish that the plaintiff falls into one of the categories established by the rules and case law, where security for costs may be ordered. Once that has been established, the onus switches to the plaintiff to establish that it falls within one of the recognized exceptions to the requirement contemplated by the rule.

[44] In this case, I am satisfied that the defendants have met the initial onus upon them. The determination of whether or not, there is an applicable exception requires consideration of a number of cases.

[45] Moreover I interpret the contingent requirement established by Justice Penny, whereby the plaintiff would be obliged to post security of \$50,000 (if the defendants failed to do so within two weeks) as reflecting the level of uncertainty as to the ultimate outcome of this case.

VIII. Caselaw

[46] I have decided a number of cases in this area including *Moosa v. Hill Property Management Group Inc.*, 2010 ONSC 13; *Wang V. Li*, 2011 ONSC 4477; *Jian Ya Li v. Fo Ling Li*, 2010 ONSC 4716; and *Livent. Inc. (Special Receiver) v. Deloitte & Touche*, 2011 ONSC 648 (CanLII). My decision in this case takes into account the applicable law as outlined in those reasons.

[47] As well, my colleague Master Glustein has drawn together a number of principles to be applied in cases such as this. I agree with his synthesis in *Coastline Corporation Ltd. v. Canaccord Capital Corporation*, 2009 CanLII 21758 and simply quote and adopt the following salient portions:

[7] I apply the following legal principles:

(i) The initial onus is on the defendant to satisfy the court that it "appears" there is good reason to believe that the matter comes within one of the circumstances enumerated in Rule 56.01 (*Hallum v. Canadian Memorial Chiropractic College*, (1989), 70 O.R. (2d) 119 (H.C.J.) at 123);

(ii) Once the first part of the test is satisfied, "the onus is on the plaintiff to establish that an order for security would be unjust" (*Uribe v. Sanchez* (2006), 33 C.P.C. (6th) 94 (Ont. S.C.J. – Mast) ("*Uribe*") at para. 4);

(iii) The second stage of the test "is clearly permissive and requires the exercise of discretion which can take into account a multitude of factors". The court exercises a broad discretion in making an order that is just (*Chachula v. Baillie*, 2004 CanLII 27934 (ON S.C.), (2004), 69 O.R. (3d) 175 (S.C.J.) at para. 12; *Uribe*, at para. 4);

(iv) The plaintiff can rebut the onus by either demonstrating that:

(a) the plaintiff has appropriate or sufficient assets in Ontario or in a reciprocating jurisdiction to satisfy any order of costs made in the litigation,

(b) the plaintiff is impecunious and that justice demands that the plaintiff be permitted to continue with the action, *i.e.* an impecunious plaintiff will generally avoid paying security for costs if the plaintiff can establish that the claim is not "plainly devoid of merit", or

(c) if the plaintiff cannot establish that it is impecunious, but the plaintiff does not have sufficient assets to meet a costs order, the plaintiff must meet a high threshold to satisfy the court of its chances of success

(See *Willets v. Colalillo*, [2007] O.J. No. 4623 (S.C.J. – Mast.) at paras. 46, 47, and 55; *Uribe*, at para. 5; *Zeitoun v. Economical Insurance Group* 2008 CanLII 20996 (ON S.C.D.C.), (2008), 91 O.R. (3d) 131 (Div. Ct.) at para. 50; *Bruno Appliance and Furniture Inc. v. Cassels Brock & Blackwell LLP*, [2007] O.J. No. 4096 (S.C.J. – Mast.) ("*Bruno*") at para. 35);

(v) Merits have a role in any application under Rule 56.01, but in a continuum with Rule 56.01(1)(a) at the low end (*Padnos v. Luminart Inc.*, [1996] O.J. No. 4549 (Gen. Div.) ("*Padnos*"), at para. 4; *Bruno*, at para. 36);

(vi) The court on a security for costs motion is not required to embark on an analysis such as in a motion for summary judgment. The analysis is primarily on the pleadings with recourse to evidence filed on the motion, and in appropriate cases, to selective references to excerpts of the examination for discovery where it is available (*Padnos*, at para. 7; *Bruno*, at para. 37);

[48] In this regard I interject to add the availability in this case as well of the evidence and decisions on the injunction motions.

[49] Master Glustein then turns to the impact of credibility issues:

(vii) "If the case is complex or turns on credibility, it is generally not appropriate to make an assessment of the merits at the interlocutory stage. The assessment of the merits should be decisive only where (a) the merits may be properly assessed on an interlocutory application; and (b) success or failure appears obvious" (*Wall v. Horn Abbott Ltd.*, [1999] N.S.J. No. 124 (C.A.) at para. 83);

[50] Based on the entirety of the Record in this case to date, I do not regard the success or failure of either side as "obvious."

[51] As well, I agree with the guidance contained in *Morton v. Canada (Attorney General)*, [2005] O.J. No. 948 (S.C.J.) (at para. 32) that on Motions under rule 56.01, the financial evidence of plaintiffs must be set out with robust particularity. Full financial disclosure is required and should normally include items such as the following:

- the amount and source of all income; a description of all assets
- (including values); a list of all liabilities and other significant expenses;
- an indication of the extent of the ability of the Plaintiffs to borrow funds; and,
- details of any assets disposed of or encumbered since the cause of action arose.

[52] In this case, the plaintiff Mark One in effect acknowledges that it is adequate assets to satisfy any costs award that might be made against it. There is no suggestion of impecuniosity.

[53] With respect to the other defendant, GNP2010, that company would appear to have no assets and to have never carried on business. It appears entirely unable to satisfy any judgment against it, which might be awarded for costs. On the other hand, the driving force for this litigation appears to be Mark One and there is some doubt in my mind, as a result of the judicial findings previously made in this matter, as to whether or not, that company or its principal is able in fact, to control the co-plaintiff, GNP2010.

[54] It seems to me that this lawsuit will either be won or lost by Mark One and as a consequence it is that company that ought to be at risk for any costs award that might be made following a trial.

[55] It is my determination, based upon the facts and applicable caselaw that Mark One is a non-resident, non-impecunious company, that has not met the onus upon it to justify my refusing to grant security for costs in this case. It seems to me this case falls at a point on the continuum where it would clearly not be unjust to require security. Conversely if the action is won by the

Attendances with clients.')

[57] Similarly another 10 hours is playing with respect to the preparation of Affidavit of Documents including review of Plaintiffs' Affidavit Documents; production for inspection, and inspection of Plaintiffs' Documents.

[58] I believe that the time sought for each of these two items is reasonable. Counsel for the defendants seeks an hourly partial indemnity rate of \$225. Counsel for Mark one argues that \$175 per hour is more appropriate for someone with her experience (less than 10 years). For the purpose of my calculations, I established an hourly rate for the pretrial matters of roughly \$200 per hour.

[59] Inasmuch as the trial will take place somewhat later in the future, I apply the proportionality concept, and allow a \$225 hourly rate for the calculation of the trial related fees.

[60] I also anticipate that a mediation will be required prior to trial and have allowed a total of 10 hours at \$200 per hour with respect to the preparation, cost of, and attendance at such mediation.

[61] I am establishing a total of \$6,000 on account of the above items.

[62] There have already been cross examinations so that the examinations for discovery may be more limited than otherwise might be expected. Counsel for the defendants estimates a total of 30 hours for this portion of the case, which includes preparation for, and attendance at, Examinations for Discovery of all parties, based on one half day of preparation and one day of attendance for each party.

[63] Counsel for the plaintiff Mark One filed an affidavit in opposition in which he acknowledged that perhaps a more appropriate time for preparation and examinations would be 36 hours, but once again, based his proposed compensation rate of \$175 per hour. In my calculations I am allowing the defendants a full 30 hours claimed for this item for a total of \$6,000.

[64] Counsel for the defendants seeks a further 24 hours of preparation and examinations for Discovery of two Non Parties under Rule 31.10: based upon one half day of preparation one day of examination per witness. Counsel for the plaintiffs indicates he does not propose examining non-parties and asserts that the potential witnesses have not been identified by the defendants' counsel.

[65] I am allowing a notional total of ten hours for these possible examinations in my calculation of an overall lump sum amount to be posted prior to this action being sent down for trial being a further \$2,000.

[66] The defendants' proposed Bill of Costs sought probable disbursements totalling \$4,090.90, for items including, Court Filing Fees, Process Server Fees, Transcripts of Examinations for Discoveries-Cross-Examinations, and "Plaintiffs' Motion Transcripts of Examinations for Discoveries".

defendants, who have already posted \$50,000 worth of security, it would be grossly unjust to leave them with a potentially unenforceable claim for the costs of this trial.

IX. An Appropriate Quantum

[56] The estimate by counsel for the defendants seeks partial indemnity costs at a rate of \$225 per hour for 10 hours with respect to pleadings ("Pleadings including reviewing Plaintiffs' Statement of Claim, preparation of Defendants' Statement of Defence and Counterclaim, review

[67] To the extent that costs of the cross examinations may have been resolved in the course of the injunction motions, I have reduced the amount to be posted on account of anticipated disbursements to the sum of \$3,500.

[68] I am therefore directing that at this time, the total sum of \$17,500 shall be paid into court (or into a trust account if the parties agree) by the Plaintiff Mark One within 30 days of the date of this Order. This sum is to represent security for the costs to be incurred up to the point this action is set down for trial.

X. Instalment Plan

[69] This would seem to be an appropriate case to apply the pay-as-you-go principal as used in a number of cases including *Bruno Appliance and Furniture Inc. v. Cassels Brock & Blackwell LLP*, [2007] O.J. No. 4096.

[70] With respect to trial the defendants' counsel claims two components:

Preparation for Trial including:

Preparation for Trial, correspondence and Brief of Trial based on assumption of two (2) weeks for Trial and two (2) days preparation for each day of Trial (140 hours @ \$225.00 per hour) = \$31,500

Trial:

Attendance at Trial based on assumption of two week Trial (10 full days): Tariff rate \$2,300.00 per day x 10 days = \$23,000.00

[71] Counsel for the plaintiffs estimates that a five day trial is more likely. As well it is postulated that the preparation for the injunctions, already undertaken, ought to reduce the total trial preparation time. At this time, given the factual issues I suspect the trial will take more than one week. I take an eight day period as a reasonable midpoint for the trial preparation calculation. The amount of preparation anticipated by the defendant's counsel is within the appropriate range.

[72] Taking 7 hours times 2 days' equivalent preparation for 8 day trial yields 112 hours or a partial indemnity sum of \$ 25,200.

[73] I am allowing 10 hours per trial day for preparation and in-court time during the trial period. For present purposes I am using the eight day estimate. The judge conducting the pre-trial conference will be in a position to adjust the trial security once both sides are closer to the actual trial.

[74] Thus for the present the trial security amount will be eight times \$2250 or a total of \$18,000.

[75] Throughout, I have treated these amounts as inclusive of any potentially net amounts referable to applicable HST.

XI. Order and Costs

[76] In the result I grant the relief sought in the notice of motion on the following basis:

- (a) I order Mark One Machinery Sales, Ltd., within thirty days of the release of this order, to post the sum of \$17,500 as security for the costs to be incurred by the individual

- 11 -

defendants up to the end of examinations for discovery and any related motions;

- (b) I further order Mark One Machinery Sales, Ltd., within sixty days of the setting down of this action for trial to pay the sum of \$25,200 as security for the costs to be incurred by the individual defendants in preparation for trial; and
- (c) I further order Mark One Machinery Sales, Ltd., no less than 30 days before the date fixed for the trial of this action, to pay the sum of it of \$18,000 as security for the costs to be incurred by the individual defendants at trial.

[77] In the event of a default in the making of any of the foregoing payments the action of Mark One shall be stayed until the default is cured or a further order is obtained.

[78] The moving parties have been successful and are entitled to their costs, at this time, on a partial indemnity basis.

[79] If counsel cannot agree on a reasonable amount for those costs, they may make written submissions in accordance with my usual costs protocol.

[80] I thank counsel for the quality of their written and oral submissions, which were of great assistance to the court.

Released: January 11, 2012



Master D. E. Short

DS/E44

Supplementary Direction re Costs Submissions

If the issue of costs cannot be resolved by agreement between the parties, I am directing the parties to comply with the following timetable for the delivery of written costs submissions:

1. from the party seeking costs, a costs outline, maximum five pages in length inclusive of schedules and appendices, shall be delivered by not later than twenty-one days from the release date of the reasons on this motion.
2. responding costs submissions, maximum five pages in length inclusive of schedules and appendices, shall be delivered within 15 days of receipt of the above costs outline; and
3. a reply, if needed, maximum three pages in length inclusive of schedules and appendices, shall be delivered within 7 days of receipt of the responding submissions.

The party seeking costs shall deliver all written costs submissions in one complete package within 10 days following the delivery of the responding costs submissions, and in any event by no later than 60 days from the date of the release of the reasons, directly to my Assistant Trial Co-ordinator, David Backes in the Masters Support Office, 393 University Avenue, 6th Floor, Toronto, Ontario.

In the event that I do not receive costs submission in accordance with the above timetable, there shall be no costs of the motion to either party.