

CASE LAW UPDATE

Hilary Book

Baryluk c.o.b. The Wyrd Sisters v. Warner Bros. et al.

2010 MBQB 66, released 28 April 2010

Costs – Costs Against a Lawyer Personally

The plaintiff unsuccessfully attempted to prevent Warner Bros. from distributing “Harry Potter and the Goblet of Fire”. In Ontario litigation, Warner Bros. then sought to enforce several hundred thousand dollars in costs against the plaintiff’s assets in Manitoba. The plaintiff’s lawyer issued a subpoena to Warner Bros.’ lead Manitoba counsel to cross-examine him concerning efforts to collect the costs judgment in Manitoba. The plaintiff’s counsel had already cross-examined Warner Bros. lead counsel in Ontario, resulting in a transcript consisting of “largely . . . meandering, immaterial and irrelevant questions and answers.”

Warner Bros. brought a motion to quash the subpoena and, on the eve of the motion, the plaintiff’s lawyer withdrew the subpoena. Warner Bros. sought costs for the motion against the plaintiff’s lawyer personally. The Court found that the subpoena had been frivolous, as was demonstrated by its withdrawal on the eve of the motion to quash. The subpoena had wasted considerable time, effort and expense, and was an abuse of process. The Court found that the plaintiff’s lawyer’s conduct had been wilful and deliberate, and that the subpoena was a tactical manoeuvre that lacked genuine merit. The Court awarded solicitor-and-client costs for the motion to quash, and split the costs 60–40 between the plaintiff and its lawyer.