

Case Law Update: Baryluk v. Warner Bros. et al.

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By Hilary Book

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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.

WeirFoulds^{LLP}

www.weirfoulds.com

Toronto Office

4100 – 66 Wellington Street West
PO Box 35, TD Bank Tower
Toronto, ON M5K 1B7

Tel: 416.365.1110
Fax: 416.365.1876

Oakville Office

1320 Cornwall Rd., Suite 201
Oakville, ON L6J 7W5

Tel: 416.365.1110
Fax: 905.829.2035