

Court File Number: CU-17-11760-0001

Superior Court of Justice  
Commercial List

FILE/DIRECTION/ORDER

BDBC Plaintiff(s)  
AND  
Astoria Organic Defendant(s)

Case Management  Yes  No by Judge: \_\_\_\_\_

| Counsel | Telephone No: | Facsimile No: |
|---------|---------------|---------------|
|         |               |               |
|         |               |               |

- 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):

BDO seeks its costs with respect to its successful defence of Sus Global's motion for leave to commence an action against BDO on a full indemnity basis. BDO also seeks payment of the recoverable own fees incurred in connection with the motion.

In my view, neither full indemnity nor substantial indemnity are

3 Jul 16  
Date

McE...  
Judge's Signature

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## Judges Endorsment Continued

warranted. While SusGlobal was entirely unsuccessful its conduct was not so unreasonable so as to attract costs on a punitive scale.

I am however prepared to grant partial indemnity of the amount sought of \$76,073.<sup>02</sup> for fees plus HST plus disbursements of \$2932.<sup>32</sup>

SusGlobal takes issue with this amount but provides no evidence as to its own fees. The law is settled that this is required. The other complaints are minor and do not warrant any deduction.

With respect to the Receiver's fees I agree with BDO that the fees are recoverable. It had to be obvious to SusGlobal that these fees would have to be incurred to defend the motion.

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Judges Endorsment Continued

I do not agree with SusGlobal that this case is meaningfully distinguishable from the decision in Polish Alliance 2016 ONSC 186 where Receiver's Fees were granted.

Further, the hourly rates are in keeping with industry standards.

Last ~~note~~<sup>fn</sup> here appears to be a very minor amount of docket entries likely not related to the motion.

I will reduce those fees by 50% to \$ 38,932.<sup>00</sup> inclusive.

All costs are to be paid in 30 days.

McE...