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**Case of Note: Failure to Request Costs in Notice of Motion does not preclude Award**

In the recent decision of *Hakim Optical Laboratory Limited v. Phillips* (2009) 96 O.R. (3d) 798 (S.C.J.), Master Glustein found that failure by a moving party to request costs in the notice of motion did not preclude her from being awarded costs.

While rule 37.06(a) of the Rules of Civil Procedure requires a party to set out the relief they seek, costs are made ancillary to such relief by rule 57.03(1), provided they are requested at the hearing of the motion. Rule 57.03(1) requires the court, on the hearing of a contested motion, to order costs, unless a different order would be more just.

Master Glustein relied on the decision by Master Clark in *Symons General Insurance Co. v. Canadian Union Insurance Co.*, [1985] O.J. No. 1625 which held “that rule 37.06 should not be applied to deny relief sought in the absence of prejudice shown from non-observance of the rules by the moving party”.

In the present case, Master Glustein found no such prejudice as the plaintiff would not have conducted itself in any different manner had the defendant requested costs in her notice of motion.