

NOVA SCOTIA COURT OF APPEAL

Citation: *Drum Head Estates Ltd. v. Chapin Estate*, 2013 NSCA 132

Date: 20131121

Docket: CA 415798

Registry: Halifax

Between:

Stephen Beal Chapin, Drumhead Estates Limited,
Angela Chapin, Celia McClure, and Joseph McClure

Appellants

v.

Ann Chapin

Respondent

Judges: Oland, Fichaud and Scanlan, JJ.A.

Appeal Heard: November 18, 2013, in Halifax, Nova Scotia

Held: Leave to appeal is granted but the appeal is dismissed with costs, per reasons for judgment of the Court

Counsel: G. F. Philip Romney, for the appellants Angela Chapin and Drumhead Estates Limited
Kathryn M. Dumke, for the respondent

By the Court:

[1] At the conclusion of the hearing of the appeal, we granted leave to appeal, dismissed the appeal, and advised that short reasons would follow. These are those reasons.

[2] In his unreported oral decision and his Order dated May 10, 2013, Coughlan, J. set costs following the respondent's filing of a Notice of Discontinuance. In his reasons, the Chambers judge reviewed the litigation between the parties which included the filing of defences and applications for security of costs but did not proceed further, and the reasons for discontinuance; and referred to *Civil Procedure Rules* 9.06 and 77. He ordered that costs of \$1,250 be paid to each of the appellants, Angela Chapin and Drumhead Estates Limited, from an amount held as security for costs, and the remainder released. The appellants seek leave to appeal and, if granted, appeal his Order.

[3] Although the appellants argue that the judge erred in not mentioning *Tariff F* of *Rule 77* in his decision, that *Tariff*, suggestions as to "the amount involved" and actual legal fees were before him in pre-hearing briefs and oral submissions. The judge stated that he set costs after considering "all the circumstances of this case". This court will not interfere with a discretionary order, unless wrong principles of law have been applied or an obvious injustice would result: *DRL Coachlines Ltd. v. GE Canada Equipment Financing G.P.*, 2011 NSCA 23 at ¶ 10. We see no error in the judge's exercise of discretion in setting costs which would attract appellate intervention.

[4] We would grant leave but dismiss the appeal, and order the appellants, Angela Chapin and Drumhead Estates Limited, to jointly and severally forthwith pay to the respondent, Ann Chapin, appeal costs in the amount of \$1,000 inclusive of disbursements.

Oland, J.A.

Fichaud, J.A.

Scanlan, J.A.