

NOVA SCOTIA COURT OF APPEAL

Citation: *Cherubini Metal Works Ltd. v. Nova Scotia (Attorney General)*,
2007 NSCA 54

Date: 20070503

Docket: CA 269398

Registry: Halifax

Between:

The United Steel Workers of America and The
United Steel Workers of America, Local 4122

Appellants

v.

Cherubini Metal Works Limited, a body corporate

Respondent

Judges: Roscoe, Cromwell and Oland, JJ.A.

Appeal Heard: February 16, 2007, in Halifax, Nova Scotia

Arguments on costs submitted via written submissions

Held: Amended order referring question of costs to chambers judge
issued per reasons of the Court.

Counsel: Raymond F. Larkin, Q.C. and Bettina Quistgaard, for the
appellants
George W. MacDonald, Q.C. and Michelle Awad, for the
respondents
Michael Pugsley for the Attorney General of Nova Scotia not
participating

Supplementary Reasons for judgment by the Court:

[1] In reasons for judgment released on April 5, 2007, the Court allowed the appellants' appeal from dismissal in Supreme Court Chambers of their summary judgment application and dismissed the respondent's action against them. The Court's reasons and order did not address the question of costs of the action. This question was touched on in the appellants' factum and during oral submissions, but understandably the submissions on appeal related mainly to the question of whether the chambers judge had erred in refusing summary judgment and in his disposition of the costs of that application.

[2] It is apparent that this Court must make some disposition with respect to the costs of the action and that the failure to do so is an omission which may be rectified under **Rule 62.26(2)**. Roscoe, J.A., the judge who approved the order, has referred this question to the panel as provided for in that **Rule**.

[3] Written submissions have been received from the parties. The appellants propose that we have a new hearing in this Court on the issue of the costs of the action or alternatively that we refer that issue to the chambers judge. The respondent's position is that there is no error in our original order, and alternatively, that the costs of the action ought to be referred for taxation.

[4] Our view is that the question of the costs of the action ought to be referred to the chambers judge and that in approaching that question, he ought to exercise his discretion as to costs as if he had granted summary judgment and dismissed the action. The action has been terminated by summary judgment. As the respondent points out, there has apparently been no quantification of the damages claimed. In our view, in these circumstances, the questions of whether costs of the action ought to follow the event and, if so, their quantum ought to be addressed by a judge of the Supreme Court. The chambers judge has dealt with a number of applications arising from this litigation and, in our view, is well-placed to exercise his discretion on all issues concerning the costs of the appellants' action against the respondent.

[5] We have accordingly issued an amended order adding a provision referring the question of the costs of the action to Coughlan, J. As noted, the costs of the

action will be in his discretion as if he had granted the appellants' summary judgment application and dismissed the action against them.

Roscoe, J.A.

Cromwell, J.A.

Oland, J.A.