

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Saturley v. Lund , 2006 NSSC 331

Date: 20061031

Docket: S.H. No. 232774

Registry: Halifax

Between:

Mary Lyn Saturley & Frederick Saturley

Plaintiffs

v.

Raymond H. Lund & Janice Bayer

Defendants

Judge:

The Honourable Justice Donald M. Hall

Heard:

August 30, 2005, in Halifax, Nova Scotia

**Final Written
Submission**

May 9, 2006

Counsel:

William L. Ryan, Q.C., counsel for the plaintiffs.

Stanley W. MacDonald, Esq., counsel for the defendants

By the Court:

[1] This is an application by the plaintiffs for costs on a successful summary judgment application respecting liability only.

[2] The issue to be decided is whether the plaintiffs are entitled to all costs up to the granting of summary judgment or restricted to costs on the chambers application for summary judgment.

[3] In a decision rendered August 30, 2005, the plaintiffs obtained an order for summary judgment against the defendants with respect to liability in an action for breach of a contract for purchase and sale of the plaintiffs' residential property. The quantum of damages are to be determined in a subsequent hearing.

[4] Mr. Ryan, on behalf of the plaintiffs, contends that his clients are entitled to their "costs on the action" since the liability issue has been wholly disposed of by the granting of summary judgment. These costs would include the issuance of the statement of claim, the receipt of the defence, the list of documents, the attendance on discovery examination and the application for summary judgment.

[5] On the other hand Mr. MacDonald, on behalf of the defendants, maintained that the summary judgment did not dispose of the “whole action” since it applied to liability only, leaving the larger issue of damages or other remedy to be determined. He stated that offers to settle were exchanged and the claim for specific performance is still in issue. He says that costs only on the chambers application should be allowed. He further argues that the costs should not be increased beyond the ordinary since the hearing took little more than an hour and only one affidavit was filed by each side.

[6] In my opinion the proceeding is far from being finally disposed of. It is not possible at this stage to fix the costs under Tariff A of **Civil Procedure Rule 63** since “the amount involved” is yet to be determined.

[7] In my view, the matter of costs on this application should be disposed of under Tariff C of **Civil Procedure Rule 63** which provides in part:

(3) In the exercise of discretion to award costs following an application, a Judge presiding in Chambers, notwithstanding this Tariff C, may award costs that are just and appropriate in the circumstances of the application.

(4) When an order following an application in Chambers is determinative of the entire matter at issue in the proceeding, the Judge presiding in Chambers may multiply the maximum amounts in the range of costs set out in this Tariff C by 2, 3 or 4 times, depending on the following factors:

- (a) the complexity of the matter,
- (b) the importance of the matter to the parties,
- (c) the amount of effort involved in preparing for and conducting the application.

(Such applications might include, but are not limited to, successful applications for Summary Judgment, judicial review of an inferior tribunal, statutory appeals and applications for some of the prerogative writs such as certiorari or a permanent injunction.)

| Length of Hearing of Application | Range of Costs |
|---|-----------------------|
| Less than 1 hour | \$ 250 - \$ 500 |
| More than 1 hour but less than ½ day | \$ 750 - \$ 1000 |
| More than ½ day but less than 1 day | \$ 1000 - \$ 2000 |
| 1 day or more | \$ 2000 per full day |

[8] It is significant that in paragraph (4), the commentary in parenthesis suggests that the provisions of paragraph (4) might be applied to provide increased costs on a successful summary judgment application where the summary judgment “is determinative of the entire matter in issue in the proceeding”.

[9] As noted above, I am of the opinion that the summary judgment was not determinative of all the issues in the proceeding. Accordingly, I conclude that the provisions contained in paragraph (4) do not apply in this instance.

[10] Paragraph (3), however, reaffirms the position that costs are in the discretion of the chambers judge despite Tariff C, and that costs may be awarded that are “just and appropriate in the circumstances of the application”.

[11] It is acknowledged that the application took more than an hour to hear but less than a half day. Under the Tariff C scale that would put the costs in the \$750.00 - \$ 1,000.00 range. Although not complicated, the application was not a simple one and undoubtedly required considerable preparation. Several issues were raised by the defence which had to be responded to by the plaintiff. In addition, one of the defendants was called for cross-examination.

[12] In these circumstances, I am of the view that the costs to be allowed to the plaintiff ought to be increased somewhat above the indicated range. I have concluded that costs in the amount of \$1,500.00 would be just and appropriate.

Accordingly, I will order that the plaintiffs have costs in that amount plus disbursements.

Donald M. Hall, J.