

IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Glen Arbour Condominiums Inc. v. Learning,
2006 NSSC 5

Date: 20060111
Docket: SH 250504
Registry: Halifax

Between:

Glen Arbour Condominiums Inc., a body corporate

Appellant

v.

Lisa Learning and Egan Wallett

Respondents

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Judge: The Honourable Justice Glen G. McDougall

Heard: September 27, 2005 in Halifax, Nova Scotia

Subject: An appeal from a decision of a Small Claims Court adjudicator who allowed the expense for two expert witnesses as part of a costs award.

Summary: After awarding the maximum damages allowable under the *Small Claims Court Act*, the adjudicator also ordered costs payable to the successful party including expert witness expenses totalling \$8,511.99. In awarding the full amount claimed for the two experts, the learned adjudicator made reference to the importance of the experts' evidence in helping him to decide the case.

Issue: Did the learned adjudicator err in law or exceed his jurisdiction by including expert witness fees of \$8,511.99 in his award of costs to the successful party in a Small Claims matter?

Result: Under the authority granted to a Small Claims Court adjudicator by the *Small Claims Court Act* and the Regulations passed pursuant thereto, there is discretion to award expert witness fees both for preparation of reports as well as preparation for and attendance to testify at trial. The value of the expert's evidence in helping the adjudicator to decide the case is an important factor in deciding what, if anything, to award as an out-of-pocket expense. The adjudicator is in the best position to decide what costs should be allowed and, provided he/she exercises discretion in a reasonable manner, the decision should not be interfered with.

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